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CHURCH AND STATE
IN
VISIGOTHIC SPAIN

A Dissertation

SUBMITTED TO THE FACULTY OF SACRED SCIENCES OF THE CATHOLIC
UNIVERSITY OF AMERICA IN PARTIAL FULFILLMENT OF THE
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PREFACE

The problems involved in the relation between Church and State are as old as Christianity. The Church with its philosophy of " Render to Caesar the things that are Caesar's, and to God the things that are God's " was diametrically opposed to the theory of the ancient world which identified government and religion, and placed man's creed and conscience under the absolute State. Though the independence asserted by the Church in matters of belief did not impair the civil loyalty of Christian subjects, it nevertheless brought them into conflict with the government. For nearly three centuries they were persecuted by the Roman State, until the Edict of Milan gave liberty and peace to the Church. It is doubtful whether Constantine himself appreciated the full import of this act of toleration which granted men freedom to follow the dictates of their conscience in matters of religion. Throughout the fourth century churchmen and civil rulers disagreed as to what the relation of a free Church toward the government should be. As yet no Pope Gelasius had arisen to formulate precisely the doctrine of the Church in this regard. But the firmness of Ambrose toward the mighty Theodosius indicated that the actual emancipation of the spiritual power was being accomplished.

New complications were added to the problem, however, by the inroads of the barbarians and the Erastian policy which the Germanic kings employed toward the national Arian Churches. In the face of this policy it was especially difficult for the Church to establish a *modus vivendi* with the barbarian kingdoms. This study purposes to deal with the problem and its solution in Visigothic Spain. Here the situation is striking inasmuch as Spain under the Visigoths was to a great extent cut off from the influence of ecclesiastical life elsewhere and almost equally immune to outside political interference. The settlement of the Visigoths as conquerors among a Roman provincial population in southwestern Europe; their adherence for a considerable time to the Arian faith and their attitude of hostility toward the Catholic Church; their conversion to Catholicism and the subsequent close union between Church and State, gave Visigothic government, laws, and civilization a unique character. The aim of the present monograph is to show the slow and difficult process by which the life of a whole people was changed and the political foundation on which it rested placed on a high philosophical plane, and to trace the evolution of a civilization from a condition little better than tribal organization to a time when it revealed a system of law, politics, and government resting on a foundation of advanced speculation and sound philosophical principles. Visigothic civilization was relatively far advanced when Spain fell before the Moorish invaders. Not only the form which the civilization ultimately took but the impulses which produced its progress came directly from the Church. It was not perfect in all its parts, but it had already shown a degree of advancement that surpassed the civilization of the other new nations, and it had assumed a direction that promised better things.

Very definite limitations have been set to this study by the poverty of the source material. Canonical and civil legislation affords almost the sole guide. The conditions out of which the legal enactments arose cannot be discussed in detail through lack of evidence. Hence the constant reference to the laws and canons is not merely because of their importance, but because they are practically the only sources we possess. The plan of the work is almost dictated by the limitations of the material. The first chapter will treat of the Goths before their conversion to Catholicism, telling of their migrations and settlement in Aquitaine and Spain; it will discuss their political institutions in this period and their cultural level. The second chapter marks their conversion, the establishment of an intimate union between Church and State, and the peculiar character which that union gave to their ecclesiastical institutions. Next the evolution of civil law under the combined influence of Church and State will be discussed. Canonical and civil legislation will form the basis for a presentation in succeeding chapters of political, judicial, and social development.

The principal sources are: Mansi, *Sacrorum conciliorum nova et amplissima collectio;* Zeumer, *Leges Visigothorum*[1] and *Formulae Visigothicae,* edited in the *Monumenta Germaniae historica;* and Haenel, *Lex Romana Visigothorum.* Scattered facts were gleaned here and there from other sources. The *Historia Gothorum* of Isidore treats of the Goths down to the year 625, and is especially useful for the period beginning with the reign of Leovigild (568). Hydatius tells in his chronicle of the contacts between the Goths and the Sueves. The chronicle of Johannes Biclarensis is valuable for the years 568-590; that of pseudo-Fredegarius, for the period immediately following Isidore's *Historia*; the *Continuatio Isidoriana Hispana,* for the latter part of Visigothic history;[2] the *Historia Wambae Regis* of Bishop Julian, for the years 672-673. All of these chronicles are critically edited in the *Monumenta Germaniae historica.* Isidore's *Etimologiae, Sententiae,* and *De viris illustribus,* the anonymous *De vitis et miraculis patrum Emeritensium;* and Ildephonse's *De viris illustribus,* all contain valuable material. Leclercq has a discussion of the sources in his *L'Espagne chrétienne* (pp. 1-24).

Among the more important secondary works consulted, Felix Dahn's two volumes devoted to the Visigoths in his *Die Könige der Germanen* (*Die politische Geschichte der Westgoten,* Band

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[1] The English version of the *Leges Visigothorum* by S. P. Scott (*The Visigothic Code*) is not based on the critical edition of Zeumer. Not infrequently the rendering of the laws is faulty; the legislation of the various sovereigns is not precisely indicated; the introduction and a few notes are almost valueless.

[2] This chronicle appears in Migne, *P. L.*, as *Isidori Pacensis chronicon*; it is edited by J. Tailhan as *Chronique rimée des derniers rois de Tolède et de la conquête de l'Espagne par les Arabes par anonyme de Cordoue.*

V; *Die Verfassung der Westgoten,* Band VI[2]) offer a detailed treatment of the whole of Visigothic history. Pérez Pujol, *Historia de las instituciones sociales de la España goda* (4 *vols.*) is an exhaustive presentation of Gothic institutions with the exception of the law. There is a decided difference in the spirit which characterizes the works of these two authors. Dahn is critical of the Catholic Church in Spain and is inclined to trace the evils in the Gothic Kingdom to its influence; Pérez Pujol treats the Church very sympathetically. Dahn has had strong influence upon English writers who have touched on Gothic history. In addition to these two authors the following works were found most useful: for the early history of the Goths, Ludwig Schmidt, *Geschichte der deutschen Stämme bis zum Ausgang der Völkerwanderung;* and Schönfeld, "Goti," Pauly-Wissowa; for early political institutions, Torres, "El estado visigótico," *Anuario de historia del derecho español* (III, 309-475); for the background in Spain, Schulten, "Hispania," Pauly-Wissowa; and Villada, *Historia eclesiástica de España,* vol. 1; for the Visigothic Church, Hefele-Leclercq, *Histoire des conciles;* and Magnin, *L'Église wisigothique,* vol. 1; for the code of civil law, Zeumer's masterly articles in the *Neues Archiv,* especially the series, "Geschichte der westgothischen Gesetzgebung"; [3] Ureña y Smenjaud, *La legislación gótico-hispana;* and Dahn, *Westgothische Studien,* the only systematic presentation of Visigothic law; for the condition of the Jews in the kingdom, "La condition légale des Juifs sous les rois visigoths," *Études offertes à Paul Girard* (II, 275-335). Many other works which were found useful are referred to in the notes, and all are listed in the bibliographical appendix.

References to the councils in this study are according to Mansi's collection. References to the *Leges Visigothorum* are according to the edition of Zeumer. In the spelling of Gothic names the *Cambridge Medieval History* has been followed.

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[3] This series of articles discusses the single laws only up to the end of the fourth book of the code; the notes in Zeumer's edition of the *Leges Visigothorum* offer the best commentary on the remaining eight books.

* * *

The author is happy to have this opportunity to express his sincere gratitude to Archbishop Messmer of Milwaukee, who has made it possible for him to pursue graduate studies at the Catholic University of America. In the preparation of this monograph he has had the guidance of the Reverend Doctor Patrick J. Healy. The writer is keenly aware that this has been a privilege and he is profoundly grateful. He thanks his other professors: the Reverend Doctor Peter Guilday, the Reverend Doctor Henry Schumacher, and Doctor Martin R. P. McGuire; the Faculty of Sacred Sciences; and the many others who have assisted him in his work at the Catholic University.

CHURCH AND STATE IN VISIGOTHIC SPAIN

CHAPTER I

The Foundation of the Visigothic State

I. *Political History to 587*

The presence of the Visigoths in Spain was the climax to a long series of wanderings, wars, and conquests which brought them from the shores of the Baltic to the borders of the Euxine, thence across the Danube, through the Balkans, subsequently into Italy, through Gaul and into Spain, where they made themselves masters, first by conquest, somewhat later by occupation. In order to understand the peculiar nature of the institutions, social and political, which developed through their efforts in the Hispanic Peninsula it will be necessary briefly to advert to their early history and their gradual cultural development. Naturally only the merest outline of their history can be introduced here.

The Goths in Eastern Europe

As far as history shows, the original home of the Goths was in Scandinavia. From there they migrated until in the early part of the third century they were established in territory north of the Euxine. At some indefinite time a line of cleavage divided the tribe into Ostrogoths and Visigoths, names which according to Jordanes described their positions relative to the east and the west, although etymologically they have no such significance.[1] Throughout the wanderings of these nations the Visigoths remained always west of their brethren.

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[1] The name Visi-Goth really meant the noble Goth, and Ostro-Goth, the shining Goth. Cf. Schönfeld, "Goti," Pauly-Wissowa, Supplementband III, 816. Schönfeld's article (*loc. cit.*, cols. 747-845) is an excellent survey

From the time of their first contact with Rome the Goths became its most dangerous adversaries on the Danubian frontier. Repeatedly their war-bands made raids into the Empire. In 251 they inflicted a crushing defeat on a Roman army near Abrittus, in which the Emperor Decius lost his life, and after which the Romans were forced to promise yearly tribute to secure the withdrawal of the enemy out of Moesia. But the raids into the Balkan Peninsula continued and reached even into Asia Minor, until the Goths were overwhelmed at Naissus in 269 by the Emperor Claudius, and a respite of nearly a hundred years was gained for the Empire. In the time of Constantine the Great the Visigoths were *foederati* and defenders of the frontier in return for *annonae,* and served as auxiliaries in the imperial armies.

These incidents, important as they were in their effect on the subsequent history of the Empire, are more important still because of the fact that it was through them that the Goths came in contact with the Graeco-Roman civilization, which was to have the greatest bearing on their subsequent development. As a result of these raids Christianity was first introduced among this barbarian people. The earliest missionaries were probably Christian prisoners captured about the middle of the third century. The conversion of the Goths as a nation to Christianity is generally attributed to Ulfila (consecrated bishop *ca.* 341), who introduced that form of Christianity known as Arianism. In 348 when persecution drove all Christians from among the Visigoths, Ulfila and his followers took refuge in Roman territory; a decade later internal dissension sent another portion of the tribe across the Danube into the Empire, where befriended by the Arian Emperor Valens the group adopted Arian Christianity. This conversion, coupled with the fact that Ulfila translated the Scriptures into Gothic,[2] gave Arian-

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of the early history of the Goths to the fall of their Kingdom of Toulouse (507). It indicates the sources and cites copious literature.

[2] Ulfila also changed the Gothic runes, already affected by Greek influence, into a script modelled after the Greek.

ism the impetus which made it the national religion of the Goths.[3] As the Empire turned back to orthodoxy Arianism came to mean something peculiarly Gothic to this tribe, a matter of nationalistic tradition and pride, which separated them from the Catholic Romans.

In 376 as a result of pressure from the Huns, who were moving westward, the Visigoths north of the Danube sought and obtained permission from the Emperor Valens to cross into the Empire. Gross cruelty on the part of Roman officials soon forced the Goths into insubordination, which culminated in the disaster of Hadrianople and the death of Valens (378). Theodosius pacified his Teuton subjects to some extent, but at the time of his death (395) they were fast getting out of control. A new leader had risen up among them, Alaric, of the family of the Balts, who became the first real king of the Visigoths.

This unification of the Visigoths into one nation and under one ruler marks a turning point in their history. Hitherto there is no evidence that they had ever given allegiance to a single sovereign. The Gothic nation was a confederation of tribes each headed by its own chieftain or ruler, some of whom held their position by election, others, by inheritance. In periods of stress it would seem that one of the most powerful of these chieftains was chosen as a military leader. The social and cultural condition of the Visigoths at this time would show that they had made little progress beyond the tribal stage. Whatever law they possessed rested on custom. The rulers did not legislate, but they appear to have enjoyed some judicial power sharing it with the popular assemblies. There are traces of the old Teutonic assemblies of the people and of the warriors down to and including the time of Alaric and even later, in which questions of politics, war, and religion were discussed.

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[3] The explanation for the spread of Arianism among the Goths which is based on the greater congruity between the old Teutonic polytheism and Arian subordinationism than between the former and the Trinitarian doctrine (*v.* Hodgkin, *Italy and Her Invaders,* I, i, 88 ff.) is considered by Dahn improbable in the light of the actual facts; he thinks the influence of Valens an adequate explanation (*v.* Dahn, *Die Könige der Germanen,* VI^2, 46).

North of the Danube the Visigoths lived in primitive conditions, dwelling in wooden houses and tents and devoting themselves mainly to cattle raising and agriculture. After crossing into the Empire they took up the cultivation of gardens and vineyards. They made use of Greek and Roman tools and utensils obtained either through plunder or purchase, and their dwellings were made more comfortable by means of furniture obtained from their neighbors. Their language showed the effect of this contact by the adoption of many words taken from Greek and Latin. It is evident that the tribe had attained to no mean level of culture; small wonder that Jordanes agrees with Dio Cassius in referring to them as most like the Greeks among all the barbarians.[4] Such were the people with "white bodies and fair hair, tall and handsome to look upon"[5] who at the end of the fourth century set out upon a migration that was to bring them to the Spanish Peninsula.

Westward Migration

Alaric led his people to conquer and plunder in Greece and lingered for a time in Epirus. From there he struck at Italy and Rome, only to be stopped by the diplomacy and military genius of Stilicho, the Vandal head of the imperial armies. The execution of that great general opened the gates of the Italian Peninsula to the Goths, and Rome fell before them in 410. The city was sacked, but only for a period of three days, and there was a lack of wantonness which indicates that the Goths were considerably removed from utter barbarism and that they retained a certain reverence for Rome.

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[4] Jordanis *Getica*, 40.

[5] Procopius, III, ii, 4. The *recapitulatio* at the end of the *Historia Gothorum* by Isidore of Seville, which contains a rather detailed description of the physique of the Goths, is considered an interpolation (cf. Wattenbach, *Deutschlands Geschichtsquellen*^{6}, I, 84, note 1).

After failing in an attempt to reach Africa and its granaries Alaric died, and Ataulf, his brother-in-law, was elected to succeed him. He led the Goths into Gaul, where for a time he allied himself with the usurping Emperor Jovinus, but finding little satisfaction in this he espoused the cause of the Emperor Honorius. His support of the Empire was probably fostered by Galla Placidia, sister of Honorius, and a prisoner in the Gothic camp, whom he married at an elaborate ceremony conducted according to Roman custom. A much quoted passage in Orosius tells us that Ataulf first planned to establish a great Gothic empire, but realizing the lawlessness of his people decided to devote himself to restoring the glory of the Roman name.[6] The emperor, evidently considering the marriage of his sister with the barbarian a disgrace to his house, repudiated all alliance with the Goths and cut off their food supplies. As a result Ataulf was forced to lead his people across the Pyrenees into Spain (415). Thither a few years previously (409) the Alans, Vandals, and Sueves had gone, so that now four Teutonic tribes found themselves together in the Iberian Peninsula.

Pre-Gothic Spain

Spain had long been a Roman province and its people had become rather thoroughly Romanized and civilized. Ethnographically the Hispano-Roman population was a mixed race. Iberians originating in northern Africa were the predominant element of the population. Before their arrival, history shows that Ligurians had settled in the Peninsula, and there had been a great Celtic invasion after the coming of the Iberians, but neither Ligurians nor Celts appear to have left any great ethnographical contribution in Spain. Mycenaean, Phoenician, and Greek trading colonies exploited the Peninsula economically, and Carthage made a partial conquest, but none of these peoples appreciably changed the racial complexion. Rome dislodged the Carthaginians from Spain (218), but it took her two hundred years to bring the natives into subjection—an eloquent tribute to the character of the Iberian population. Rome's conquest was most effective in the fact that she imposed her civilization.

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[6] *Adversum paganos*, VII, 43, 4-8.

For purposes of government Rome divided the Hispanic province into administrative units. Ultimately five provinces were erected, and these administrative divisions continued throughout the Visigothic period. To the northeast lay the province of Tarraconensis; in the northwest, Galicia; in the west, Lusitania, approximately modern Portugal; Baetica formed a rough wedge in the south central portion; and Carthaginiensis included practically the entire southeast. At a subsequent period Mauretania and Tingitania in Africa and the Balearic Islands were made parts of the diocese of Spain, but they were never included in the Visigothic Kingdom. The influence of Rome was most notable in Baetica, along the coast of Carthaginiensis and Tarraconensis, and in the lowlands of Lusitania. The Roman colonists were the ruling class, and Latin became the common language. The Roman period in Spain brought great economic development—the exploitation of the natural resources, agriculture, and especially mining, and also considerable manufacturing. The system of large landed estates gradually became the general order, and the laboring classes were drawn mostly from the old Iberian population. The uplands of the north and northeast, though certainly not untouched, were not transformed by Roman civilization. Its influence penetrated thither chiefly through the auxiliaries which these regions sent to the imperial armies. City life was not so developed and native tribal divisions persisted. As the Empire declined Spain suffered with it and the population was prostrated under an intolerable burden of taxation and maladministration. However, the *Pax Romana* endured there long after the barbarians disturbed the Empire elsewhere.

Besides economic wealth Spain contributed to Rome a remarkable number of literary geniuses in the Silver Age; and the Emperors Trajan and Hadrian, as well as Theodosius at a later date, were of Spanish origin.[7]

Christianity undoubtedly penetrated into Spain very early, but its beginnings there are shrouded in a maze of fact and legend. Only in the third century do records in regard to the Spanish Church become definite; by then the Christian community had grown rather large and prosperous. In the imperial persecutions of the Christians, especially that of Diocletian, there was a considerable number of Spanish martyrs. Nineteen bishops attended a synod held at Illiberis (Elvira, now Granada) in the first decade of the fourth century. The canons of the council seem to indicate a considerable laxity among the faithful as regards the Christian code, and this the council sought with stern zeal to overcome. In the second half of the fourth century the Church in Spain was troubled by Priscillianism, which was condemned in a council at Saragossa (380), and abjured by its adherents in the First Council of Toledo (400). Among great names in the early Spanish Church may be mentioned Bishop Hosius, friend of Constantine, Juvencus, Prudentius, and Orosius.[8]

Barbarian Invasions of Spain

Up to the beginning of the fifth century Spain's isolated position had saved her from the inroads of the barbarians and consequent devastation. In 409 the Vandals, Sueves, and Alans broke through the indifferently guarded passes of the Pyrenees and meeting little resistance (Honorius needed all his troops elsewhere) spread over Spain, each nation under its own leader, ravaging as they went. Tarraconensis, Galicia, Lusitania, and part of Baetica were devastated; the West and South suffered most. Some of the towns set up a defence and, especially in the East, succeeded in maintaining themselves nominally under Roman rule.

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[7] For a careful survey of early Spain cf. Schulten, "Hispania," Pauly-Wissowa, VIII, 1965-2046; for the economic aspects *v.* M. Rostovtzeff, *The Social and Economic History of the Roman Empire*, pp. 198-202.

[8] For a brief survey of early Spanish Christianity *v.* H. Leclercq, "Espagne," *Dictionnaire d'archéologie chrétienne et de liturgie*, V, i, 407-523; for a full account *v.* Villada, *Historia eclesiástica de España*, I, "El christianismo durante la dominación Romana," in 2 parts.

For two years the ravages of the invaders continued, until in 411 they entered into a treaty with Rome and agreed to settle down in Spain as *foederati,* i. e., subjects of the Empire with the obligation of defending the region from foreign attacks. They cast lots for the territory that should go to each nation. Of the two tribes of Vandals—the Asdingians and Silingians—the latter settled in Baetica (Andalusia); the former with the Sueves received Galicia; the Alans, numerically the strongest people, obtained Lusitania and Carthaginiensis. There is almost no evidence to show how the Hispano-Roman population was dealt with. Much of Spain still remained subject to the Empire even in the territories where the invaders settled, but since the Emperor had withdrawn his troops, the non-Germanic parts of the country became virtually independent. According to Orosius the invaders put aside their swords for plowshares and lived at peace with what remained of the old population.[9]

But any prospect of quiet days for Spain was definitely dispelled when in 415 the Visigoths entered and took possession of Tarraconensis. Here after a few months King Ataulf died of a wound inflicted by one of his followers. His successor, Sigerich, who was hostile to Rome in sentiment, perished by assassination a week after his election. Wallia, the instigator of the murder, was elected king by the anti-Roman party. Again, as they had done in Gaul, the forces of the Emperor cut off food supplies from the Goths, so that the new king was forced to strike out for Africa. Upon the destruction of his fleet Wallia made peace with Rome, agreeing to restore Placidia to her brother and promising to subdue the other barbarian tribes in Spain in return for grain. Making good his promise he practically exterminated the Silingian Vandals in Baetica, and enfeebled the Alan power in Lusitania, so that the survivors joined the Asdingian Vandals in Galicia. He would have completed the conquest of Spain had not the Romans called a halt by giving the Goths Aquitania Secunda and neighboring territory in Gaul where they might settle down (418). Thus the Goths acquired a home, which they were to hold for nearly a hundred years, until they were expelled by the Franks. Here they founded their Kingdom of Toulouse. Only in the beginning of the next century, after they had been much in contact with the Roman provincials and taken on many Roman ways, did they enter Spain to dwell there and eventually establish the Kingdom of Toledo.

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[9] *Adversum paganos,* VII, 41, 7.

The Gothic Kingdom of Toulouse

In Aquitania, Wallia was soon succeeded by Theodoric I, who ruled for over thirty years (420-451). Though the Goths settled down as *foederati* of the Empire, they were too keenly aware of their own strength to remain long in this subordinate relation, and their history now becomes a varying picture of peace and war, victory and defeat, as they strive to push their lines to the Loire and to the Rhone. Fortunately when the West seemed to lie prostrate before Attila, the Visigoths threw in their lot with the Empire and their prowess stemmed the Hunnic advance at the *locus Mauriacus,* more often referred to as the Catalaunian Fields (451). Here Theodoric perished and his son Thorismud was elected successor by the army. Thorismud's assassination two years later brought to the throne his brother, Theodoric II (453-467), a philo-Roman at least while his friend Avitus ruled as emperor, and a man of considerable culture.[10]

On behalf of the Empire in 454 the Goths entered Spain to subdue the insurgent Bagaudae, who were disturbing the peace there, and shortly afterward they marched against the Sueves in the Peninsula. The Suevic power had rapidly grown strong after the departure of the Vandals for Africa (429) and had reached out from Galicia and seized Baetica and Carthaginiensis. It threatened even Tarraconensis, the stronghold of the Empire in Spain. Thereupon, at the request of Avitus, Theodoric II led an army of Goths and other barbarians against the Sueves and completely defeated them near Astorga (456). Braga was sacked with great barbarity and later Astorga and Palencia. For ten years the Peninsula was distracted with conflicts and pillage and a constant passing and repassing of troops.

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[10] *V.* Sidonii Apollinaris *epistolae,* I, 2.

In 466 Theodoric was murdered by his brother Euric, who became his successor. Under him the Kingdom of Toulouse attained its greatest glory. It came to include Gaul from the Pyrenees to the Loire, and from the Atlantic to the Rhone and the Mediterranean, and also southern Provence. Besides, Euric acquired a firmer grasp on Spain, where he held Carthaginiensis, parts of Baetica and Lusitania, and, after 476, Tarraconensis, which alone the Empire had effectively kept from the Visigoths. The Sueves remained in possession of Galicia and part of Lusitania. But the Visigothic kingdom had grown too vast and its dissolution was inevitable. The Goths were too few in number to control such an expanse of territory. Moreover, they had not developed an adequate system of administration, merely attempting to use such governmental machinery as they had inherited from the decadent Empire. Accordingly under Euric's weak son, Alaric II (484-507), the kingdom declined, and at the battle of Vouglé (507) the Franks under Clovis put an end to the Kingdom of Toulouse. Only what was later called Septimania remained Gothic territory in Gaul.

The Founding of the Gothic Kingdom of Toledo

Theodoric the Ostrogoth, father-in-law of Alaric II, saved the throne for the latter's youthful son Amalaric, over whom he acted as guardian, and under his benign regency a much needed period of quiet descended upon Visigothic Spain and Septimania. At his death the Franks again threatened, Amalaric perished, and the Visigoths saved themselves by electing as their king, Theudis, an Ostrogoth, formerly Spanish governor for Theodoric (531). Establishing himself at Barcelona in his Spanish possessions, the first Gothic king to do so, Theudis flung the Franks back across the Pyrenees. He perished by the hand of an assassin (548), as did also his successor, Theudegisil, after a brief reign of eighteen months.

The next king, Agila (549-554), set up his capital at Merida. Finding Baetica largely in the possession of independent Romano-Spanish nobles he attempted to subdue them, but in doing so exhibited an anti-Catholic bias that alienated much of the population. In an attempt to overthrow Agila, Athanagild, a member of the Gothic nobility, capitalized this spirit of opposition and began a revolution. To further his cause he invited the help of the Emperor Justinian and the latter gladly sent an army, which seized the larger coast towns on the east and south of the Peninsula. Agila met defeat before the combined forces and death at the hands of his followers, so that Athanagild succeeded to the kingship (554). Once come, the Byzantines were loath to leave and entrenched themselves firmly in the Peninsula, secure in the affections of the Hispano-Romans, for whom the Eastern Empire represented the rule of Rome and the championship of orthodoxy against barbarian invaders and heretics. For thirteen years from his capital in Toledo Athanagild strove in vain to dislodge the Greeks by force, while he solicited the loyalty of the Catholic population by a policy of benevolence. He was one of two or three early Gothic Kings to die a natural death (567).

His brother Liuwa, who was elected to succeed him (568), took another brother, Leovigild, as coregent, allowing him to reign in Toledo, while he retained the Gothic territory in Gaul. Leovigild by no means acceded to the throne of a united Spain, since, besides the Byzantines and less loyal Romans of the East and South, the Sueves were still strong in the West, and independent nobles held various districts in the Northwest. Without delay, however, he set out to realize an ideal of political solidarity in Spain, beginning with an effort to subjugate the Sueves. Before he achieved this the death of Liuwa (573) left him the sole ruler of the kingdom. Thereupon Leovigild appointed his sons, Recared and Hermenegild, dukes of Narbonne and Toledo. Perhaps this apparent attempt to found a dynasty in disregard of the Gothic system of an elective monarchy aroused the nobles; perhaps Leovigild offended them in some other way; at any rate from that time his attempts at uniting Spain under his rule were constantly thwarted by rebellions on the part of the nobles both Gothic and Roman. Insurrections broke out in various parts of the Peninsula, but Leovigild with the help of Recared succeeded in putting them down. In 578 there was internal quiet. Then the greatest revolution of all began under the leadership of Hermenegild, the king's son.

Hermenegild had married a Catholic Austrasian princess, Ingundis, who became the object of petty religious persecution on the part of the Arian Gothic queen, the second wife of Leovigild. To relieve this situation the king sent his son to govern Seville. Here, under the instruction of Bishop Leander, Hermenegild became a Catholic. Just how much religion had to do with his revolt cannot be definitely established. The relations between the Arian kings and their Catholic subjects will be discussed later. Leovigild did resort to religious persecution, it is true, and the Roman nobles in the South, little bound by ties of loyalty to their Gothic Arian rulers, undoubtedly looked upon the converted Hermenegild as a champion of their cause. However, Isidore of Seville tells of a policy of proscription employed by Leovigild, which may have been the more important reason for the nobles' disaffection: "*Quoscumque nobilissimos ac potentissimos vidit aut capite truncavit aut pro-*

scriptos in exilium egit."[11] In 579 the revolt began. Seville and several other cities proclaimed Hermenegild king. In the meantime Leovigild was obliged to march against the rebellious Vascons, but in 582 he was ready to put an end to his son's rebellion. Hermenegild had allied himself with the Byzantines in the Peninsula, but Leovigild by bribery made any assistance from them impossible. Seville fell after a long siege and the prince gave himself up at Cordova. Later he was murdered by Sigisbert, in whose charge Leovigild had placed him and who tried in vain to win him back to Arianism.

In 585 Leovigild, turning again to the conquest of the Sueves, terminated their separate national existence and made them part of the Visigothic State. When he died in 586 only the Byzantines denied his hegemony in the Peninsula. His military and political policy had been singularly fortunate. In it he stands out as probably the greatest of the Visigothic kings. His religious policy, as we shall see presently, was less happy. With the election and conversion to Catholicism of Recared, his son and successor, a new policy of government with a new period in Visigothic history begins.

II. *Gothic Institutions*

Economic Life

After this summary of early political history attention must be directed to economic, political, social, and religious institutions of the Visigoths after their westward migration. Naturally the first big problem which confronted the Goths in Gaul was the division of the land between themselves and the indigenous Roman population. Our earliest source in regard to this matter, the legal code of King Euric, dates only from about 475. It would seem, however, that this code follows the method of division used from the beginning of the settlement in Aquitaine. According to Euric's law the Goths were given two-thirds of the farm land, while the Romans kept one-third. In the later compilations of the *Leges Visigothorum* laws referring to the division of land in this same proportion were retained.[12] Apparently pasture and woodland remained undivided.[13] It is generally thought that a division was made as regards slaves and cattle. The small farms as well as the large estates were divided and the Goths settled down on them as *hospites.*[14] They did not dwell in groups according to *sippen,* or clans, in districts apart from the Roman population.[15]

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[11] *Historia Gothorum,* 51.

It is evident that the Goths fared very well in the division. The soldiers of Odoacer and the Ostrogoths in Italy, despite the fact that they were in position to dictate, appropriated only one-third of the land. Of a division between the Vandals, Alans, and Sueves, and the Hispano-Romans we are not informed by the sources. Among the Burgundians there appear to have been several land divisions, but by a royal law in the last quarter of the fifth century the Burgundians were to receive two-thirds of the farm land.[16] In their first occupation of Aquitania two-thirds of the land may have been given the Goths because nothing less would suffice for their numbers in this restricted territory.[17]

It is estimated that Wallia had 100,000 warriors in Gaul besides women, children, and old men, an enormous increase over the original band of Alaric. The army had grown especially in Italy, when Ostrogoths, Huns, and escaped slaves had swelled its ranks, but the Visigothic nucleus seems to have assimilated all these foreign elements.[18] By the sixth century the people must have doubled in number,[19] but their territory had increased so much that they could have been only a handful among the Roman population. However, shortly after the beginning of this century the Goths lost most of Gaul and became concentrated in Narbonensis and Spain. Presumably many of them had filtered into the Peninsula with the invading armies of Theodoric II and Euric. Procopius tells us that at the time of Amalaric's defeat by the Franks in 531 the survivors of the vanquished Goths emigrated from Gaul with their wives and children and went into Spain.[20]

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[12] "Legum codicis Euriciani fragmenta," 277, in Zeumer, *Leges Visigothorum,* p. 5; cf. also *Leges Visigothorum,* X, 2, 1; X, 1, 8 and 16.

[13] *Leg. Vis.,* VIII, 5, 5; X, 1, 9.

[14] *Eur. fr.,* 276.

[15] Cf. Torres, "El estado visigótico," *Anuario de historia del derecho español,* III, 404-405.

[16] Cf. H. Brunner, *Deutsche Rechtsgeschichte,* I^2, 72-80.

[17] Cf. Alfred von Halban, *Das römische Recht in den germanischen Volksstaaten,* in Untersuchungen zur deutschen Staats- und Rechtsgeschichte, Heft LVI, 162 ff.

Agriculture carried on by means of slaves was the economic basis of the Visigothic Kingdom. The Gothic law code has very many references to grain fields, meadows, vineyards, oak forests, animal husbandry, especially to hogs and horses; it lays down regulations on farm boundaries and trespassing.[21] As for commerce, the code contains only four brief laws on foreign traders. We have already seen that there were large estates in Spain under the Romans. Procopius records that King Theudis (531-548) married a Spanish matron who had wealth and a large estate, and that from this estate Theudis gathered a bodyguard of about two thousand soldiers.[22] The Gothic nobility likewise built up large holdings for themselves, and both State and Church possessed much real property. The beginnings of economic feudalism are to be found in the fact that commendation [23] and precarious tenure [24] existed.

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[18] Cf. Dahn, *Die Könige der Germanen*, VI^2, 50-52; L. Schmidt, *Geschichte der deutschen Stämme bis zum Ausgange der Völkerwanderung*, I, 166-167; 221-222.

[19] L. Schmidt, *op. cit.*, p. 280.

[20] Procopius, *History of the Wars*, V, xiii, 13.

[21] Cf. *Leg. Vis.*, VI, 2, 4-5; XI, 1, 13-14; X, 3, 1-5; VIII, 3, 10-17; VIII, 5, 1-4; II, 1, 26; III, 1, 5; a glance through the index of Zeumer's edition of the *Leges Visigothorum* will reveal many other references under pertinent words. *V.* Eduardo Pérez Pujol, *Historia de las instituciones sociales de la España goda*, IV, 345-386.

[22] *History of the Wars*, V, xii, 50-51.

The State

Politically the Goths even when they settled in Gaul were not merely a nomadic tribe or an army of occupation, but a State with its own peculiar organization. They possessed a rather well defined kingship, an army, a national religion, and their own traditional customs. After they had established themselves in their new home their kingdom developed in its own way, assuming much that was Roman, retaining much that was Teutonic. The result was a State that was peculiarly Visigothic.[25]

The Kingship

The center of the whole administration in the Visigothic State was the kingship as it had gradually evolved out of the military leadership of Alaric—an institution of great power, paradoxically offset by elements of singular weakness. From the beginning the kingship was elective, though the method of election was not at first clearly defined; in each case much depended on the exigencies of the moment. Thus Thorismud was chosen on the field of battle by the army. The leaders of a revolution at times installed a usurper of their own choice. As time went on the election became the right of the nobles, and we shall see later that in the seventh century the councils when laying down the method of election included the bishops with members of the nobility as electors.

Usually the son of a king if he showed himself at all worthy of the dignity was elected to succeed his father. In some cases the brother of a king followed him. The elective monarchy, though in itself a democratic ideal, was evidently an institution for which the Goths were not prepared; it was the cause of endless insurrection and machination in the kingdom, but with the nobles as lawless as they were, only a powerful, efficient dynasty could have controlled them, and had there been a family capable of doing this its members could have held the kingship even under the electoral system.

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[23] *Legum codicis Euriciani fragmenta*, 310-311; *Leges Visigothorum*, V, 3, 1-4, especially 4.

[24] *Leg. Vis.*, II, 1, 8; X, 1, 11-15; cf. Zeumer, "Formulae Visigothicae," 36-37, in *Formulae Merovingici et Karolini aevi* (*MGH*), p. 591. For detailed treatment *v.* Dahn, *Die Könige der Germanen*, VI², 122 ff. Cf. also Torres, "El estado visigótico," *AHDE*, III, 367-372.

[25] This is the thesis of Torres in "El estado visigótico."

The royal wealth became one of the chief sources of the king's power. At the time of the settlement in Gaul the king received for his portion the private estates of the emperor in the allotted territory as well as the properties of the *fiscus*—in part at first, later *in toto*.[26] Confiscations, especially for sedition and treason, must have gradually increased these possessions very materially. The taxes levied on the Roman inhabitants accrued to the king, as did also judicial fines and a share of the loot of war. The right of coinage likewise belonged to him. Among the chief expenses of the king were the upkeep of the army, support of the court and its officials, and largess to his factional adherents.[27]

The kings in imitation of the emperors assumed the legislative power and began issuing laws probably from the time of Theodoric I. This important matter will be dealt with in a chapter devoted to Visigothic law. In passing we may remark that the legislation of the Visigothic kings was less arbitrary, for example, than the edicts of the Amals; the kings among the Western Goths seemed to feel obliged to refer their laws or codes to the bishops and nobles and later to the councils.[28] These princes never felt such legislative self-sufficiency as that with which the *Corpus iuris,* following the Roman *jurisprudentes,* invested the Byzantine Emperor on the plea that the people had conferred all their *imperium* and power upon him.[29] They resemble more the Anglo-Saxon kings associating their Witan with themselves in proclaiming the law.

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[26] Torres (*op. cit.*, p. 375) observes that these estates became the property of the State rather than of the kings and are referred to as *terrae fiscales* and not *regales*. He also sees the idea of the State rather than the person of the king back of the term *confiscare*, which is so frequently used in Visigothic law.

[27] Cf. L. Schmidt, *Geschichte der deutschen Stämme*, I, 297 ff.; Dahn, *Die Könige der Germanen*, VI², 271.

[28] Dahn, *op. cit.*, VI², 243 ff.

The supreme judicial power rested with the king. The Visigothic Code reveals him as a judge in both first instance and appeal, and as invested with the right of pardoning. Further than this, all judicial power exerted by officials was declared to emanate from him.[30]

As chief executive the king had control of the army and the police, a power which at times was used in tyrannical and arbitrary fashion to get rid of political offenders. The sovereign had sole charge of the foreign policy. The old Gothic institutions which might have acted as checks on the royal power ceased to be operative. Thus the assembly of the people no longer convened, nor could it do so when the tribe was scattered through so vast a territory. During the time of the Visigothic occupation of Gaul the army exerted some influence, but subsequently in Spain it lost its pre-eminence. The Goths became less warlike; soldiers were recruited from among the slaves; and toward the end of the seventh century King Wamba was compelled to resort to drastic measures to restore order and discipline in the army. Nevertheless, the power of the king was seriously limited by the nobles with their tendency to sedition, so much so in fact that to save themselves the kings turned to the Church and submitted in a considerable degree to the guidance of the bishops. The result was, we shall see, that the arbitrary power of the kings was curbed, but their position was strengthened.

As for the trappings of royalty the earlier rulers seem to have deviated little from the ways of the Goths. Theodoric II (453-

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[29] *Digest,* I, iv, 1; *Institutes of Justinian,* I, ii, 6.

[30] *V.* especially *Leg. Vis.,* II, 1, 15; II, 1, 11. Cf. Dahn, VI², 223 ff.

467) wore his hair long "after the fashion of his race"; his tastes were simple; his bodyguard consisted of Goths clad in garbs of skin. He did, however, administer affairs from a royal seat surrounded by armed nobles.[31] The court of the powerful Euric (467-485) took on added grandeur, but after him the kings became weaker. Gaul was lost to the Visigothic monarchs, and Spain with its factions, rebellions, and Byzantines yielded grudging allegiance. A mighty ruler was needed to make an end of anarchy and restore the prestige of royalty. That ruler came in the person of Leovigild, who strengthened the position of the king and quite definitely established the sovereignty of the Gothic monarchy over Spain. In token of the restored power of his kingship he proceeded to surround himself with Byzantine pomp.[32] The coins of the later kings together with the relics of royalty preserved to us show the purely Byzantine character of the royal insignia.[33] The court was made up of followers of the king who were called *palatini;* chief among them were the *comites cubiculariorum, scanciarum, notariorum, patrimoniorum, spathariorum,* and *stabulorum.*[34]

The Administrative Units of the Kingdom

In the administration of the Gothic State the pre-existing Roman system was in the main carried out. The division into provinces persisted, with Gothic *duces*[35] as chief civil and military officials ruling over them instead of Roman *praesides.*[36]

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[31] Sidonii Apollinaris *epistolae,* I, 2.

[32] Isidori *historia Gothorum,* 51.

[33] Dahn, *op. cit.,* VI², 530 ff.; Pérez Pujol, *Historia de las instituciones sociales de la España goda,* IV, 45 ff.; *Enciclopedia universal ilustrada,* XXI, 908. On the coins *v.* A. Heiss, *Description générale des monnaies des rois wisigoths.*

[34] Dahn, VI², 299-300; for the terms *v.* Du Cange, *Glossarium mediae et infimae Latinitatis, s. v., comes.*

[35] The *dux* was also called *comes provinciae,* and, after the Roman fashion, *iudex,* or *rector provinciae.*

[36] The old Roman provinces of Spain were in some instances subdivided by the Goths: thus Carpetania with its capital at Toledo was

Within the provinces were the *civitates* (city districts or territories), each having a city (*civitas, urbs, oppidum, municipium, municipiolum*) as its center and a *comes* with judicial, financial, and police powers as its head.[37] A *vicarius* served as substitute of the *comes* in all his functions.[38] The *pacis assertor* was a judge appointed by the king for some special matter.

Within the *civitas* the Roman institution of the *curia* continued to exist in Gothic times with its members bound to the public *munera* and responsible for the payment of taxes. From among the *curia* the people elected a *defensor,* who enjoyed civil and criminal jurisdiction in minor cases and actually was the chief magistrate of the *civitas,* though dependent on the *comes.* As the name indicates, he was expected to defend his people against oppression.[39] Connected with the *curia* were also the *numerarii,* who had charge of collections and accounts.[40] The cities remained largely Roman in population and enjoyed greater freedom under the Goths than they had under the

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split off from Carthaginiensis. Besides Spain the Goths held the province of Narbonensis or Septimania in Gaul. The Balearic Islands were not in the Visigothic kingdom and apparently Tingitania was not; conquest of it by the Visigoths is never recorded by the chroniclers, nor did a bishop from there ever attend the Spanish councils; catalogs which list it with the Spanish provinces are evidently of the Roman period, since they do not include Narbonensis (*v.* Jules Tailhan, "Les Espagnols et les Wisigoths avant l'invasion arabe," *Revue des questiones historiques,* XXX, 6-7). The exact number of *duces* is doubtful. For further discussion of the division into provinces *v.* Dahn, VI², 63-65 and 323; Pérez Pujol, II, 32 ff.

[37] The *pagus* division of the Frankish kingdom did not exist in Visigothic Spain.

[38] Apparently Dahn is mistaken in considering the *iudex* as a distinct official of the *civitas* with judicial and police powers next to the *comes* (VI², 321 ff.). The *iudex* was merely one of the other officials acting in his judicial capacity. Pérez Pujol does not mention him in the hierarchy of judges (II, 274). Cf. K. Zeumer, "Zwei neuentdeckte westgothische Gesetze, I," *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde,* XXIII, 83.

[39] Pérez Pujol, II, 291-293; Dahn, VI², 300 ff.

[40] Pérez Pujol, II, 293 f.

Empire.[41] In the districts outside of the *civitates* the office of magistrate was filled by officials called *villici*. As judge for a special case a *pacis assertor* might be appointed. The *saiones* were beadles who assisted the judges.[42]

The *dux, comes,* and *vicarius* enjoyed jurisdiction over both Romans and Goths; the *defensor* reached only the Romans until the nation was placed under one code of laws. The Goths brought with them their old institution of officials based on the number of men they controlled. The *millenarius,* or *thiufadus,* led a thousand men in war and acted as judge among them in both peace and war. The *quingentenarius, centenarius,* and *decanus* were probably only military leaders. Probably also the *thiufadus* ceased to have jurisdiction outside of the army after the promulgation of King Receswinth's code (654).[43] A most important personage, as we shall see later, even from the civil viewpoint, was the bishop, who resided in the *civitas* and became the champion of the people against the oppression of the magistrates. The Visigothic civil code, which merely presents law for the use of judges, informs us that all judicial power was dependent on the king. Otherwise we know very little about the relations between the smaller units of the kingdom and the central government.

The Social Scale

Although the prominent families of earlier days retained noble rank after the migration and probably fared well in the division of land in Aquitaine, their title of birth tended to disappear in a new aristocracy based on wealth, public office, and especially personal service to the king.[44] The nobility became sharply distinguished from the common freemen. The sources apply many different titles to the nobles: *seniores, primates, priores, primores, proceres, potentiores, honestiores, magnates,* etc.[45] Their number cannot be estimated even approximately, but Fredegarius did not deem it impossible that King Chindaswinth in the middle of the seventh century executed two hundred *primates* besides five hundred *mediocres* of the party opposed to him.[46] Highest and most influential among the nobility were the court dignitaries mentioned above. The nobles were in truth the greatest power in the Gothic State, but their power was unregulated and not subservient to the interests of the kingdom. They were ever stirring up revolt, making and unmaking kings. To counteract this destructive influence the Catholic sovereigns threw themselves into the arms of the Church and established the intimate union of Church and State. The relations between the nobles and the kings, and the union between Church and State form practically the whole subsequent history of the Visigothic Kingdom. From the social viewpoint the greatest line of cleavage lay between the slave and the freeman. The problems arising out of slavery will be dealt with in a later chapter.

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[41] Cf. von Halban, *Das römische Recht in den germanischen Volksstaaten,* in Untersuchungen zur deutschen Staats- und Rechtsgeschichte, LVI, 173 ff.

[42] Concerning the *saiones* cf. Zeumer "Zwei westgothische Gesetze," *Neues Archiv,* XXIII, 102-103. Originally in Visigothic law *saiones* were mentioned as members of a *comitatus* (*v. Eur. frag.,* 311).

[43] *V.* Zeumer, *Leges Visigothorum,* p. 63, note 1; Dahn (VI², 224) thinks otherwise.

[44] Dahn, VI², 88-89; L. Schmidt, *Geschichte der deutschen Stämme,* pp. 284-285.

Civilization and Romanization

One might be expected to offer a somewhat adequate picture of civilization among the Goths and their approximate degree of Romanization. There exists, unfortunately, no one source whence the picture can be drawn. Small facts culled here and there from jejune chronicles, moral writings, laws, letters, poems, placed together mosaic-wise are all that we possess.[47]

The Visigoths were far more cultured than the Franks and the Sueves. They had been in contact with the Roman world for a hundred years before they came into the West. When they found a permanent home there they gradually settled down among the more numerous Roman population, and their Romanization was not retarded by the influx of barbarians out of the German North. Several of their early kings were Romanophiles. The administration was perforce organized largely according to the Roman system. As was noted above, the court took on the ways of Byzantium. The system of coinage was based on the *solidus,* and the units of time, weight, and measurement were likewise all Roman.

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[45] For a discussion of the titles cf. Pérez Pujol, I, 482 ff.

[46] *Chronicarum quae dicuntur Fredegarii libri,* IV, 82.

[47] Pérez Pujol has carefully gathered this material, though his presentation of it is confused (II, 80-139).

Yet the Visigoths had clung more tenaciously to their German ways than had the Ostrogoths. The latter had capitulated almost at once before Roman culture and simply taken over Roman law, whereas the code which developed among the Visigoths was a gradual and discriminating amalgamation of the written code of Rome with Germanic customary law.[48] The Visigoths developed a State that was peculiarly their own because of the way in which they fused German and Roman institutions.[49] Though some of the Goths settled in the cities of Spain,[50] most of them leaving the towns to the Romans dwelt in the country, and thus the races were prevented from mixing freely. The fact that the Romans bore the whole burden of taxation [51] must have embittered them against their masters. The greatest chasm between the two peoples was the law which forbade intermarriage between Goths and Romans. The constitution of Valentinian and Valens (375) forbidding marriages between Romans and barbarians under pain of death was incorporated into the *Lex Romana Visigothorum,* which Alaric II in 506 granted to his Roman subjects. Under King Leovigild (568-586) the prohibition was abrogated.[52]

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[48] Cf. Halban, *op. cit.,* p. 237; Ludwig Schmidt, *op. cit.,* p. 284.

[49] Cf. Torres, "El estado visigótico," pp. 312-313.

[50] *Ibid.,* pp. 415-417; Pérez Pujol, II, 195.

[51] *Leges Visigothorum,* X, 1, 16.

[52] *Leg. Vis.,* III, 1, 1. Cf. Zeumer, "Geschichte der westgothischen Gesetzgebung," *Neues Archiv,* XXIII, 477-478, and XXIV, 573-576. Dahn

For some time after their invasion into the West the rank and file of the Visigoths had remained skin-clad, long-haired barbarians. They retained their Germanic violence of character: it appeared in their games and amusements as well as in their vices. They were covetous and prone to murder and insurrection. In their offences against sex-morality violence rather than torpid Roman corruption would seem to have prevailed.

Little is known of their devotion to the Gothic language, but in the end only their names and a few words in the legal code survived. Even the law code of King Euric (*ca.* 475) was written in Latin. If the version of the Scriptures by Bishop Ulfila had survived in the Gothic Church the use of it was surely abandoned when the Goths were converted to Catholicism toward the end of the sixth century. Nothing is known of the language of their Arian liturgy, but Fredegarius states that Recared ordered their Arian books burned at the time of the conversion.[53] The Arian clergy evidently had little intellectual influence, while Catholic Romans acted as advisers to the early kings, especially in their lawmaking. Many links with the Gothic past must have been broken at the time of the conversion of the people to Catholicism. Latin was the exclusive language of the kingdom. Kings Recared, Sisebut, Chindaswinth, and Receswinth, and a Count Bulgaran have left letters in Latin. Sisebut a few decades after the conversion indulged a penchant for Latin writing, even composing some verse. During the seventh century, when Spain and Ireland were the strongholds of Latinity, Gothic churchmen shared the culture of the Roman.

Religion: Arian Conquerors and Catholic Subjects

Our information is very meager concerning the Arianism of the Goths and the relation of that religion to the government. We have seen that it became closely associated with the nation

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errs in attributing this law to Receswinth in the middle of the seventh century (*Die Könige der Germanen*, VI², 80 ff.).

[53] *Chronicarum libri*, IV, 8.

as something which distinguished the Goths from the Romans. It would seem that, like the Arianism of the days of Constantius and Valens, whence it sprang, it was strictly subordinated to the civil government. Hans von Schubert thinks that the very fact we have so few records of the religion is an indication that it was overshadowed by the State.[54] He takes it for granted, as do others who discuss the matter, that the power of the Gothic kings to appoint the civil and military officials included the appointment of bishops in the national Church. In the time of Leovigild we are informed that the king appointed Siuma (Sunna) bishop over the Arians in Merida (Emerita).[55] The same king called the Arian bishops of his kingdom to a council in the year 580, and to further his plans for religious unity induced the Arian clergy to abandon the rebaptism of converts from Catholicism—a point that had hitherto been considered of basic importance by the sect.[56] The apparent ease with which the conversion was brought about in 589 seems to indicate that their heresy did not lie very close to the hearts of the Goths, and the paramount rôle of the king in negotiating the conversion of his people is further proof of the purely Erastian relationship between Arian Church and State.

A Bishop Sigesar is mentioned in the army of Alaric I as baptizing the puppet emperor Attalus into the Arian faith and as educating the children of Ataulf. That these children were torn from his arms by their murderer indicates perhaps scant respect for the episcopal office. Other bishops, if they existed at the time, are not referred to. Eight Arian bishops signed the Catholic profession of faith with King Recared at the Third Council of Toledo and the name of one or the other who refused to sign is known.

Sidonius Apollinaris in describing the daily routine of Theodoric II says: "Before daybreak he goes with a very small retinue to attend the service of his priests. He worships with great zeal, but, confidentially, one can detect more of habit than of conviction in this piety."[57] The same author writes of Euric: "They say that the mere mention of the name of Catholic so sours his countenance and heart that one might doubt whether he was not more the head of his sect than of his nation."[58]

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[54] *Staat und Kirche in den arianischen Königreichen und im Reiche Chlodwigs*, p. 61.

[55] *De vitis patrum Emeritensium*, x ff.

[56] Johannis abbatis Biclarensis *chronica*, anno 580.

The policy of the Arian government toward its Catholic subjects is likewise little known. It was not broadly tolerant like that of the Ostrogoths, nor as cruel as that of the Vandals. Neither do we possess a satisfactory knowledge of the attitude of the Catholic provincials toward their heretical masters. For Gaul, Gregory of Tours gives details of a rather harsh policy of persecution and a corresponding disloyalty of Catholics toward their Gothic masters in favor of the orthodox Franks. But Gregory wrote a hundred years after these events and was himself biased against the Goths and devoted to the Frankish cause. Sidonius probably gives a more accurate picture.[59] Naturally, however, the Romanized provincials resented the coming of the barbarians and were disinclined to recognize them as their masters.[60]

With the imperial administration failing on every side the Church formed the great bond of Roman unity, and the bishops naturally became the champions of the old Roman cause. Thus the prelates associated themselves with the forces of opposition to the barbarian government or were suspected of doing so.[61] Euric, bent on crushing opposition, resorted to methods well calculated to weaken the Catholic Church in Gaul, exiling some of the bishops and keeping sees vacant, so that religion fell into a sad state of decay.[62] Alaric II softened his policy, until to secure the loyalty of the Romans against the Franks he gave them a Roman code of laws under which to live, the *Lex Romana Visigothorum,* or *Breviarium Alarici.*[63] Nor was he disappointed, for Apollinaris, the son of Bishop Sidonius, with his troops of Auvergne, fought courageously, if in vain, for his Arian sovereign on the field of Vouglé (507).[64] In 506 the Catholic bishops, gathered for the Council of Agde, had recognized that they convened by the permission of King Alaric and ordered prayers for him, especially for his longevity, and for his kingdom.[65]

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[57] Sid. Ap. *epistolae*, I, 2.

[58] *Epistolae*, VII, 6.

[59] Cf. O. M. Dalton, *The Letters of Sidonius*, vol. 1, "Introduction." F. Görres, "Kirche und Staat im Westgotenreich von Eurich bis auf Leovigild," *Theologische Studien und Kritiken*, 1893, pp. 708-734, minimizes the persecution of the Visigothic kings and emphasizes the disloyalty of the Catholics; he accepts very literally the assertion of Gregory of Tours that the Catholic subjects of the Goths abetted their Frankish coreligionists.

[60] Salvian's eulogy of the barbarians (cf. his *De gubernatione Dei*, written 439-451) as masters incomparably preferable to the Romans is a thesis and must be taken *cum grano salis; v.* P. de Labriolle, *History and Literature of Christianity from Tertullian to Boethius*, tr. by H. Wilson, pp. 439 ff.

As regards Spain, Theodoric II in his wars against the Catholic Sueves destroyed church property and maltreated ecclesiastics with a ruthlessness that must have sprung from religious fanaticism.[66] Later the Sueves were proselyted to Arianism probably through Gothic influence.[67] Amalaric provoked a

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[61] Duchesne, *Early History of the Christian Church,* tr. by Claude Jenkins, III, 417.

[62] Cf. Sid. Ap. *epistolae,* VII, 6.

[63] Though the Breviary of Alaric was largely compiled from the Theodosian Code, little of the latter's sixteenth book containing extensive privileges for the Catholic Church found its way into the Gothic collection. Two hundred and one constitutions were reduced to eleven. All laws against Arianism, the Constitution of Valentinian III on the authority of the Apostolic See in the West, and many privileges of the Catholic hierarchy were omitted.

[64] *V.* Gregorii Turonensis *historia Francorum,* II, 27; cf. P. Gams, *Die Kirchengeschichte von Spanien,* II, i, 485-486.

[65] J. D. Mansi, *S. conciliorum nova et amplissima collectio,* VIII, 323, "Concilii Agathensis praefatio."

[66] Hydatii Lemici *continuatio chronicorum Hieronymianorum,* 174 and 186.

[67] *Ibidem,* 232.

Frankish invasion into Spain by cruel treatment of his Frankish wife because of her Catholic faith.[68]

As was noted above in the political history, the religious issue was intimately intertwined with the political in the reigns of Agila, Athanagild, and especially that of Leovigild, who was a zealot for the Arian cause. An instance of his tactics is found in his effort to introduce Arianism into Merida, where he strove to pervert the Catholic bishop, Masona (Mausona), and his flock. Failing in this he established Siuma (Sunna), an Arian, in the see, giving over to him Catholic churches. When Masona refused to surrender the tunic of St. Eulalia the king sent him into exile and had Nepopis, probably a Catholic on friendly terms with the crown, elected to the vacant bishopric.[69] His zeal appears further in his calling of the Arian synod to Toledo and his discarding of rebaptism as a means of expediting conversions to his sect. Evidently Leovigild did not aim at religious unity merely for reasons of expediency, as a solution for the political discord of his kingdom; he really thought of the Romans as heretical and of the Goths as possessing the *Catholica fides.*[70] His attempts to win over the Hispano-Romans to Arianism did gain a few converts, among them a bishop. Following the methods of King Euric before him, Leovigild strove to undermine the Catholic Church by sending bishops into exile,[71] among others John Biclar.[72]

That the religious issue played some part in the revolt of Hermenegild we can presume from the attitude of Leovigild toward the Catholic Church, the conversion of Hermenegild, and the dislike of the Catholic nobles for their Arian sovereign. However, we have no evidence that the Catholic clergy threw in their lot with the rebellious prince. In fact the contemporary Spanish writers show no sympathy for him. John Biclar, who had suffered at the hands of Leovigild, and Isidore refer to Hermenegild as a rebel and seem to have considered his actions as unjustifiable revolution.[73] Gregory of Tours, likewise a contemporary and rather deeply interested in the history of the rebellion,[74] considered that divine punishment was inevitable for Hermenegild because of his revolt against his father, even though the father was a heretic.[75] Inasmuch as Gregory detested Arianism and had little love for the Gothic Kingdom the sincerity of his disapproval is quite evident.

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[68] Greg. Tur. *historia Francorum*, III, 10; Procopius, *History of the Wars*, V, xiii, 10.

[69] *De vitis patrum Emeritensium*, x ff.; *v.* von Schubert, *op. cit.*, pp. 96-97, note 2. For a discussion of Masona *v.* F. Görres, "Mausona, Bischof von Merida," *Zeitschrift für wissenschaftliche Theologie*, 1858, pp. 319-325; *v. Acta sanctorum*, Novembris t. I, 309-316.

[70] Johannis abbatis Biclarensis *chronica*, anno 680.

[71] Isidori *historia Gothorum*, 50; cf. Greg. Tur. *historia Francorum*, V, 28.

[72] Isidori *de viris illustribus*, 44.

Pope Gregory the Great is chiefly responsible for the glorification of Hermenegild. He does not mention the rebellion, but speaks of Hermenegild's conversion through the preaching of Leander of Seville and of futile attempts on the part of Leovigild to bring him back to Arianism. Gregory attributes the execution of the prince in prison to an order of Leovigild because of his son's refusal to receive communion from the hands of an Arian bishop. Biclar does not implicate the father in the martyrdom, though he does imply that Hermenegild died for his faith. Gregory adds that Leovigild seeing the error of his ways was filled with remorse and, though he did not become a Catholic, entrusted his son Recared to Leander for instruction in the Catholic Faith. Any evidence for this is lacking in the Spanish sources.[76] Gregory, as he himself says, met Leander, who was in exile at Constantinople, and received part of his information from the Spanish prelate. Leander may not have possessed accurate information concerning what happened in his absence from Spain. What Gregory's source was for the repentance of Leovigild we do not know.

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[73] *Chronica*, anno 580 ff.; *Historia*, 49.

[74] Cf. *Historia Francorum*, V. 28; VI, 11.

[75] *Ibid.*, VI, 43.

[76] Gregorii Papae *dialogorum libri*, III, 31 (Migne, *P. L.*, LXXVII, 289-293).

Pope Gregory remarks elsewhere that at the time of their meeting Leander was discharging a legation in Constantinople "*pro causis fidei Wisigothorum.*"[77] This does not, however, prove that he was acting as an ambassador of Hermenegild; he may have been conferring with the emperor concerning affairs of the Church in the part of Spain held by the Byzantines or laying before him grievances of the Spanish bishops in regard to Leovigild's attitude toward the Church. At any rate Leander himself did not refer to Hermenegild in the sermon which he preached at the conclusion of the Third Council of Toledo (589), at which the Goths made their profession of faith. Isidore in reporting the life of Leander in his *De viris illustribus* does not refer even to his ministrations in connection with the conversion of Hermenegild. The anonymous author of *De vitis patrum Emeritensium* in the seventh century repeats some of Gregory's account, but where Gregory says that Recared followed "*non patrem perfidum, sed fratrem martyrem*" the Spanish writer changes "*fratrem martyrem*" into "*Christum Dominum.*"[78] His work otherwise shows him to be quite hostile to Leovigild. It seems evident that the Spanish Church did not espouse the cause of the Catholic prince against his Arian father.[79]

The success of Leovigild's military policy was in marked contrast with the failure of his ideals as regards unity of religion. His efforts at union on a basis of Arianism were futile, and necessarily so, because he asked the element in his kingdom, higher from the viewpoint of civilization and culture, to abandon a religion now age-old in Spain for a perverted faith professed by the ignorant barbarian conquerors. The next chapter will show that his successor read the handwriting on the wall. The policy of the government toward the Catholic Church was reversed. The Goths entered the Church as a nation. More than that even, under the new policy the Gothic State formed a union with the Church so unique as to seem deserving of this special study.

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[77] Sancti Gregorii Magni *moralium libri*, I, 1 (Migne, *P. L.*, LXXV, 510-511).

[78] *De vitis*, xxxvii.

[79] On this whole matter cf. *Acta sanctorum*, Novembris t. I, pp. 310 ff.; and Martii t. II, pp. 271 ff.

CHAPTER II

THE COUNCILS AND THE BISHOPS IN THEIR RELATION TO THE STATE

I. *The Councils*

The Conversion of the Goths to Catholicism

With the reign of Leovigild, the last of the Arian kings, one period of Visigothic history comes to a definite close. The next sovereign, Recared, became a convert to the Catholic Church, and his conversion with all that it implied made profound changes in the affairs of the kingdom. During the Arian period there existed in Spain a condition of antagonism between the dominant Arian conquerors and the Catholic Hispano-Roman subjects. This condition of conflict and friction affected all the departments of life. Differences in race and religion had resulted in the maintenance and perpetuation of different religious and legal institutions, which in spite of common national interests and popular welfare had nullified all possibility of amalgamation or unification. The real history of Visigothic Spain may be said to have commenced with the conversion of the Goths to Catholicism. The process of unification began almost immediately and found concrete manifestation in the great council held in Toledo in 589. This council did much to remove the barriers which separated the two peoples in the Visigothic Kingdom and opened the way to subsequent unification of law and administration. Hence it must be discussed in considerable detail. Whether it was the success resulting from this plenary council of the Catholic Church in Spain or the fact that the kings in later times found that the Church was the most potent factor in securing national unity and peace, we find that councils of a similar character became a fixed institution in Spanish life.

King Recared (586-601) became a Catholic very shortly after he began to reign and brought his people with him into the Church. With rare prudence he used not force but reason and persuaded even some of the Arian bishops to embrace the Catholic Faith.[1] There is of course no reason for believing that Recared's conversion was solely a matter of political expediency. His mother may even have been a Catholic; his brother Hermenegild died a martyr to the faith; he himself presumably came under the elevating influence of Bishop Leander. Personal sentiment and conviction may well have been the important elements in his conversion. In 589 he summoned the Catholic bishops of his kingdom to the Third Council of Toledo, where he together with the clergy and nobility converted from Arianism made a solemn profession of faith. A feeble remonstrance came from the Arian party in the form of an insurrection. This was promptly put down and the sect apparently soon disappeared from the Peninsula. Thus religious dissension, always a prolific source of trouble, came to an end.

The Third Council of Toledo and the Union of Church and State

The healing of heresy was by no means the only matter of importance that resulted from this council. It started traditions that were for over a century to mold Gothic Church and State. In the first place the important position of the Catholic Church was recognized officially in the kingdom, and Catholicism became the State religion. It was a victory for the Church, and must have made a profound and lasting impression upon the Gothic mind. The august assembly itself of over three score bishops was visible evidence of the power of the Church.

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[1] "Reccaredus primo regni sui anno mense X [587] catholicus deo iuvante efficitur et sacerdotes sectae Arrianae sapienti colloquio aggressus ratione potius quam imperio converti ad catholicam fidem facit gentemque omnium Gothorum et Suevorum ad unitatem et pacem revocat Christianae ecclesiae" (Johannis Biclarensis *chronica,* anno 587).

Recared enlisted their aid as allies of his rule, inviting them to participate in matters of civil administration; later kings were to think back to this body when seditious nobles threatened the throne. Elements of a theocracy or hierocracy for Spain were beginning to shape themselves.

At the same time the foundations for a policy of Erastianism were being laid by Recared. Presumably he had no ulterior motives, since this was the policy among the Arian nations as well as the tradition of the Eastern Empire. He called the council, and after taking the initiative in the profession of faith continued to do so when the bishops prepared for synodal legislation. In fact he explained that he felt it his duty not only to provide his people a peaceful rule, but also to give thought to matters spiritual: "... *est adhibenda solicitudo desiderare et cogitare divina, inhiare ad sublimia et ab errore retractis populis veritatem eis serena luce ostendere.*"[2] Noble ideals, indeed, but nevertheless fraught with peril for the Church, unless pursued with great moderation. He asked the council to order the recitation of the Creed of Constantinople before the communion of each mass, and urged that the morals of the insolent be curbed by stricter commands and prohibitions.[3] At the end of the council the king issued an edict sanctioning the canons with severe penalties; strangely enough, goods confiscated for violation of the decrees were to accrue to the *fiscus.* Recared then signed the conciliar acts before the bishops appended their signatures.[4]

Churchmen were not scandalized at this activity of the king; rather were they elated. John Biclar says: "... *Reccaredus rex ... sancto intererat concilio renovans temporibus nostris antiquum principem Constantinum Magnum Sanctam synodum Nicaenam illustrasse praesentia, nec non et Marcianum Christianissimum imperatorem, cuius instantia Calchedonensis*

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[2] Mansi, *S. conciliorum nova et amplissima collectio,* IX, 989.

[3] *Ibid.,* col. 990.

[4] *Ibid.,* col. 1000.

synodi decreta formata sunt."[5] In their canons the bishops several times refer to the king as the final authority for certain pieces of legislation; even those decrees giving the Church a grip in matters of civil jurisdiction (which will be dealt with later) were passed, it must be remembered, to satisfy the royal will. It is pleasing to note that Leander of Seville addressing the assembly on the happy occasion of the conversion of the Arians confines himself to spiritual matters, and far from flattering the king makes no mention of him.

Thus then, in 589, we find the Visigothic State and the Catholic Church acting together in a most intimate and amicable union: the king reaching out into the spiritual domain to the apparent gratification of the Church, and the Church taking up civil matters at the invitation of the king. As time went on, the course of history was to make a close alliance with the Church highly desirable to the Gothic kings, and the union grew stronger. The council of 589 set a precedent; subsequently other councils were to weave new strands into the cable that bound Church and State together. A word now about these Spanish councils.

The National Councils

In Toledo, the national capital of the Visigothic kingdom from the latter part of the sixth century, and at the same time the metropolitan city of the province of Carthaginiensis, councils gathered eighteen times between 589 and 701. Just how many of these are to be considered national or plenary councils is a matter of dispute. Certainly eleven of them were such. Pérez Pujol, whose work on Visigothic institutions is most exhaustive, would class only the Eleventh Council (675) as merely provincial.[6] He likewise considers the Third Council of Saragossa (691) to have been national. These synods assumed such importance in the Spanish mind as to be called at times "general" councils.[7] With the exception of the Eighteenth, the acts of all these councils have been preserved. In the same period provincial synods, some of which reflect in their decrees the close union between the civil and spiritual powers, were held in other cities of Spain. Outside of Toledo ten provincial councils were held in the Gothic kingdom of which the records are extant; besides there were three held in Galicia under Suevic kings before Leovigild conquered the Sueves.[8]

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[5] *Chronica*, anno IV Reccaredi (589).

[6] *Historia de las instituciones sociales de la España goda*, III, 287 ff.; for other opinions *v.* H. Leclercq, *L'Espagne chrétienne*, p. 334, or E. Magnin, *L'Église wisigothique*, I, 49.

The Civil Aspect of the National Councils

The epithet "national" as applied to the Visigothic councils has a significance beyond that of "plenary." Guizot says:

> The Councils of Toledo were the national assemblies of the Spanish monarchy. Spain has the singular characteristic that in this first period of its history the clergy played there a much greater rôle than anywhere else: what the Marchfields and Mayfields were among the Franks, the Witenagemot among the Anglo-Saxons, the General Assembly of Pavia among the Lombards, that the Councils of Toledo were among the Visigoths of Spain. There laws were made, all important affairs of the country were discussed. The clergy were, so to say, the center around which were grouped the king, the lay nobility, the people, society as a whole.[9]

The Toledo Councils resembled the other assemblies referred to by Guizot inasmuch as they were the mild check upon the royal authority characteristic of the Teutonic peoples. However, in no way must the councils be associated with the Campus Martius or Madius, or Lombardic Assembly of warriors as popular or military gatherings. Such convocations had long since disappeared out of Visigothic life. The councils were somewhat more closely related to the assembly of Frankish nobles that came together not *hostiliter,* but *simpliciter,* i. e., without their folk under arms, to advise the king. Perhaps the Witan offers better grounds for comparison, but, as Guizot says, in the Spanish bodies the clergy played a much greater rôle than in any of the others. In Spain the assemblies were fundamentally and chiefly ecclesiastical synods; the liberal measure of civil power which they enjoyed makes them unique in the history of the Church.

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[7] *V.* Toledo V, canon 3; Tol. XIV, canon 1.

[8] For a list of them *v.* Pérez Pujol, *op. cit.*, III, 105; and Magnin, *op. cit.*, pp. 113-114.

[9] François Pierre Guizot, *Histoire de la civilisation en France* (*Cours d'histoire moderne,* ed. Brussels, 1835, I, 326), dixième leçon.

It is of course true that from time to time in the early mediaeval world synods were held in other kingdoms which played a considerable part in matters of State. These meetings were usually what are called "mixed synods," i. e., bodies composed of laymen and ecclesiastics (such as the Gothic councils). Several synods held in England toward the end of the seventh century dealt with things ecclesiastical rather than civil. However, the nine canons in favor of religion and morality drawn up at a council held under King Ina of Wessex in 691 or 692 were incorporated by that king into his Book of Laws, and the twenty-eight canons of a similar nature decreed by the Synod of Berkhamstead (697) became known as the *Judicia Withredi Regis.* Early in Merovingian Gaul the synods became closely associated with the civil power. Clovis in 511 called the First Synod of Orleans and prescribed what the bishops were to consider; later the prelates asked for royal confirmation of their decrees. Frequently these Merovingian Councils protested the encroachment of the civil power on the ecclesiastical domain; only rarely were they asked to settle political matters.[10] In the seventh century and thereafter into Carolingian times mixed councils were of frequent occurrence. In practically all of them the Church fought for her rights, but none of them dealt with civil affairs to any extent until the time of Charlemagne and his capitularies, when the *concilia mixta* became mere organs of his Erastian regime. As an isolated instance the mixed council of Neuching (772), called by Duke Tassilo of Bavaria, brought Church and State into unusually intimate relationship. Following the behest of the Duke the assembly legislated in both ecclesiastical and civil matters and contributed eighteen enactments to the civil code.

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[10] On the Merovingian councils *v.* O. M. Dalton, *The History of the Franks by Gregory of Tours,* I, 300-302.

In Visigothic Spain the councils assumed from the beginning a very definite character not only in the ecclesiastical but also in the civil life of the kingdom. Though essentially ecclesiastical in nature and composition, they were given considerable competence in civil affairs. Matters of internal administration in the kingdom and even questions of a purely political nature were placed before them. They supported the kings, and their relations with the sovereigns were decidedly more amicable than those between the Frankish kings and their synods. The reasons why the Spanish councils possessed their extraordinary civil powers will be discussed later; now a word about the synods themselves.

The Councils Convoked by the Kings

All or nearly all of the national councils in the Visigothic Kingdom were convoked by the kings.[11] Yet the arrogation of this ecclesiastical power by the civil rulers was not resented by the clergy. They welcomed this interference, and the councils explicitly recognized the assumption as a right of the kings.[12] There is no evidence of any rule requiring the calling of national councils at stated periods. A decree of the Fourth Council of Toledo (633) ordered that when a question of faith or other matter of importance to the Church as a whole arose a plenary council (*generalis synodus*) of Spain and Narbonensis was to be convoked; each province was, however, to hold a synod once a year.[13] The lack of a definite regulation

[11] Pérez Pujol, *op. cit.*, III, 290-291.

[12] *V.* Magnin, *op. cit.*, pp. 52 ff.

[13] Canon 3. Ordinarily the metropolitan bishops called the provincial synods, though in a few instances even these met at the king's behest.

regarding the frequency with which plenary councils were to be called is seen from their dates. After 589 there were the two purely ecclesiastical councils of 597 and 610;[14] the next did not occur until 633; while six were held in the twenty years that followed. Another long interval intervened between 656 and 681. Seven convened in the succeeding twenty years.[15] The frequency with which councils were held at certain times was due not to the problems which vexed the Church or the people, but to the needs of individual kings who required the support of a council.[16]

Personnel of the Councils

Though these councils were what might be called mixed synods, the bishops constituted the great majority in attendance. In the six ecclesiastical provinces of the Visigothic kingdom there were about eighty episcopal sees.[17] The number of bishops present at the different councils varied greatly: over three score were present at the Third and Fourth, in 589 and 633; twenty-two at the Fifth, in 636; the signatures of the Tenth (656) are apparently incomplete. Often the bishops sent proxies; there were twenty-seven of these at the Thirteenth Council (683).[18] In voting, the will of the majority of the bishops ruled; the minority had to conform, or leave the assembly under excommunication.[19] From the ranks of the clergy there were also abbots, priests, and deacons present at the councils. Those members of the lay nobility who attended usually

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They were not held as frequently as canonical legislation required. On the provincial councils *v.* Magnin's excellent discussion, I, 106 ff.

[14] *V.* Pérez Pujol, III, 287.

[15] The Third Council of Saragossa held in 691 may also have been a national council.

[16] *V.* Magnin, I, 55-56.

[17] The sees are listed in Magnin, I, 134 ff., and (for Spain) in Pérez Pujol, II, 41 ff.; in *Enciclopedia universal*, "España," XXI, 748.

[18] Magnin, I, 57.

[19] Toledo VIII, canon 11.

came at the invitation of the king, though in a few instances it would seem that the bishops invited the lay delegates.[20] As a matter of fact the presence of laymen at councils was not an innovation introduced at this period. The Council of Tarragona (516) had encouraged bishops to bring members of the laity with them.[21]

Quite naturally the nobles invited were those close to the king, the palatine officials of his court. The only information we have as to the number who were present is to be found in the signatures appended to the decrees of several of the councils.[22] The records of the Third Council of Toledo bear the signatures of five *viri illustres* and indicate that *all* the Gothic *seniores* signed thereafter. But, since this was the council at which the Goths made abjuration of heresy, it is not typical of the number or dignity of the laymen who attended the later councils. From the Third (589) to the Eighth Council (653) no signatures of laymen have been preserved. Seventeen signed at this latter council; four at the Ninth; fifteen at the Twelfth; twenty-six at the Thirteenth; seventeen at the Fifteenth; sixteen at the Sixteenth. The laymen were always fewer than the clergy; their number was probably kept small by the kings as part of the policy by which the elective sovereigns bolstered their cause by playing off the spiritual lords against the powerful hereditary lay nobles.[23]

The capacity in which the palatines assisted has been a matter of considerable controversy. Opinions have varied from that which holds the nobles in the councils to have been merely a guard of honor about the king, a means of lending éclat to the gathering, to that which considers them to have had full voting rights even on purely spiritual legislation. Pérez Pujol after a detailed study based on the canons and royal documents connected with the councils concludes that the palatines had decisive votes only in matters wholly or partly of secular character.[24] His arguments appear quite conclusive.

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[20] For details *v.* Magnin, I, 59-60.

[21] Canon 13. *V.* Hefele-Leclercq, *Histoire des conciles*, I, i, 36.

[22] K. Zeumer, *Leges Visigothorum*, pp. 485-486, lists them together for convenient reference. Pérez Pujol gives a table indicating the attendance at the various councils (III, 293).

[23] *V.* Felix Dahn, *Die Könige der Germanen*, VI², 491.

Even this limited vote must have seriously affected the nature of the synods and embarrassed ecclesiastical legislation. The bishops of the Seventeenth Council (694) appear to have awakened to the incongruity of permitting lay grandees to be present at these gatherings and of being called on themselves to take up the discussion of matters purely secular. Accordingly, at this late date they decided that laymen were to be excluded for the first three days of a council, when the Fathers were to discuss matters of faith and the morals of the clergy, while they gave themselves over to fasting.[25]

Procedure at the Councils

As regards conciliar procedure we find prescriptions laid down by the Fourth Council of Toledo,[26] but they evidently refer to provincial councils, since they do not mention the presence of the king and they presume that only one metropolitan is in attendance. However, since the national councils must have been conducted along nearly the same lines, procedure in accordance with the canon is described here.

Before sunrise on the day the council convened the church[27] in which it was to be held was cleared of people, and the doors were locked, with the exception of one, which was guarded. Through this the bishops entered, taking places according to seniority in the episcopate; next came the priests who were privileged to attend and then the deacons. The former were seated in a circle immediately back of the bishops, the latter remained standing before them. Lastly, the laity who were to attend entered with the necessary notaries. At a word from the archdeacon (of the metropolitan see, in the case of a provincial council) all prostrated themselves in prayer. A senior bishop rose to recite a prayer aloud, to which the others answered "amen," and then were bidden to rise from their knees. After a deacon clad in an alb had read from the "Book of the Canons" the rules for holding councils the bishops were free to bring up matters for legislation, each point being settled before a new one was introduced. When the bishops' wishes were taken care of any cleric or layman desiring to bring a case before the council could secure its introduction through the archdeacon of the metropolitan. The bishops were required to stay until the conclusion of the council, and adjournment could take place only when all business had been disposed of.[28]

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[24] *Op. cit.*, III, 297-313.

[25] Canon 1.

[26] Canon 4; *v.* Mansi, X, 617-618.

[27] Some of the synods held in Toledo convened in a church dedicated to the patroness of the city, St. Leocadia, virgin and martyr; others met in that of Saints Peter and Paul, the so-called Basilica Praetoriensis, and in St. Mary's.

A very important element in the procedure of the national councils was the presence of the king. Only two councils (the Sixth and the Seventh) fail to note in their records that he attended. Nor was his attendance merely passive. He directed the attention of the assembly to the matters he wished them to deal with, and it would seem that at the earlier councils he remained for the deliberations. Beginning with the Eighth Council King Receswinth addressed a document, the so-called *tomus,* to the assembly, in which he expressed his wishes. From the Twelfth Council on, the *tomus* apparently made the presence of the sovereign at the rest of the proceedings unnecessary and he withdrew after it had been presented. At the end of several of the councils the king ratified the canons by special decree sometimes adding spiritual as well as civil sanctions, so that conciliar legislation became virtually the equivalent of civil law. For the acts of nearly all the councils there is some indication of royal approval.[29]

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[28] Of the duration of the councils we know very little: the Twelfth Council of Toledo (681) lasted sixteen days; the Thirteenth (683), ten days; and the Sixteenth (693), eight days. V. Karl Zeumer, "Geschichte der westgothischen Gesetzgebung II," *Neues Archiv,* XXIV, 48, note 1.

Competence of the Councils

The national councils (and in some cases the provincial synods) enjoyed competence in both ecclesiastical and civil matters. They were left rather free in the ecclesiastical sphere; the Gothic kings occasionally suggested Church legislation, but they did not intrude themselves into theological disputes as did the Byzantine rulers.

To delimit exactly the civil province of the councils is difficult; certainly their powers were not extensive enough to constitute them parliaments in any full sense of the word. Generally speaking, they had only such powers as the king vouchsafed them out of the plenitude of his own authority. In his addresses to them and in other ways he suggested what he wished them to do. Under his direction they enjoyed certain circumscribed powers of civil legislation and the privilege of proposing matters for royal legislation. They were also called upon for aid in the administration of the kingdom. They had no power, of course, of levying taxes. Since the councils were the institution that brought and kept Church and State together so intimately, much space in the ensuing chapters will be devoted to them and their enactments.

II. *The Bishops*

Royal Power of Appointment

Before the conversion of the Arians and the close union of the Catholic Church and the Visigothic State the Catholic bishops of Spain were chosen in the traditional way by clergy and people and they were approved by the bishops of the province. Thereafter, however, the kings made episcopal appointments. This tremendous power of the king over the

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[29] Cf. Pérez Pujol, *Historia de las instituciones sociales de la España goda*, III, 324-325.

Church, the taproot of evil for the Church in the mediaeval world, appears to have been asserted almost from the time of the Gothic conversion to Catholicism. The Arian kings enjoyed this prerogative in their own sect; the same right was claimed or assumed by their Catholic successors. As early as 599 the Second Provincial Synod of Barcelona in referring to different methods of episcopal election includes royal nomination and, though it strikes at abuses, this manner of nomination is in nowise censured.[30] Isidore of Seville mentions without the least sign of disapproval King Sisenand's disinclination to appoint a certain man to a bishopric, whose appointment he himself advocated.[31] King Chindaswinth nominated Eugene to the see of Toledo in spite of the protest of St. Braulio, who wished to retain Eugene as his archdeacon.[32] The Synod of Merida (666) refers in passing to the consecration of bishops "*ab alio metropolitano*" (probably of Toledo) at the command of the king.[33] The Twelfth Council of Toledo (681) very explicitly gives the bishop of Toledo the right to install a bishop in any vacant see of the kingdom after nomination of the candidate by the king.[34] The same canon concedes to the king the right, not mentioned elsewhere, of naming rectors of churches.[35]

It is true that the Spanish Church did not at once concede the right of appointing bishops to the kings. Without being specific as to abuses the Third Council of Toledo (589) had insisted that no one should be raised to the episcopal dignity except in accordance with the ancient canons.[36] The Fourth Council of Toledo (633) declared that no one should be made a bishop unless elected by all the people and clergy of the *civitas* and approved by all the bishops of the province.[37] Nevertheless, from the previous citations it is apparent that these rulings did not prevent the sovereigns from making episcopal appointments. There was no bitter struggle between the Church and the kings concerning this matter, as there was in Burgundy and Merovingian Gaul, nor do the evils flowing from royal nomination appear to have been in any degree so appalling as they were in the Merovingian kingdoms.[38]

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[30] Canon 3.

[31] Isidori ad Braulionem *ep.* XIII (anno 632).

[32] Braulionis ad Chindaswinthum *ep.* XXI and XXII.

[33] Canon 4.

[34] Canon 6; cf. Toledo XIII (683), canon 9.

[35] "Hanc quoque definitionis formulam, sicut de episcopis, ita et de caeteris ecclesiarum rectoribus placuit observandam."

[36] Canon 1.

Evils in the Episcopacy of the Visigothic Church

And yet that there were great evils in Spain can be gleaned from the legislation of the councils. The Second Synod of Barcelona took measures against the raising of laymen to episcopal dignity without the observance of the proper canonical intervals of time between the various orders; the Fourth (633) and Eleventh (675) Councils of Toledo dealt with the evil of simony in episcopal elections, and the former council in order to keep out unworthy candidates laid down a list of irregularities. Both the Fourth (633) and the Seventh (646) Councils of Toledo legislated against clerics who took part in insurrection.[39] Three bishops participated in the rebellion against Wamba (673).[40] Sisbert, metropolitan of Toledo, was convicted of treasonable conspiracy by the Sixteenth Council (693).[41] In the latter half of the seventh century councils deemed it necessary to legislate against cruelty, violence, and incontinence of bishops.[42] Plainly the influence of barbarism had told upon the Church. Presumably the standards of the episcopacy suffered considerably by the appointment of Goths to that dignity. That there was a considerable number of them among the prelates is evident from the signatures appended to the decrees of the various councils.[43]

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[37] Canon 19.

[38] For a discussion of the Spanish aspect of this matter *v.* Pérez Pujol, III, 106 ff.; better, Magnin, I, 140 ff.; regarding Gaul *v.* Dalton, *Gregory of Tours*, I, 288 ff., and Dill, *Roman Society in Gaul in the Merovingian Age*, pp. 476 ff.

[39] IV, canon 45; VII, canon 1.

[40] They were Gumildus, Iacintus, and Wilesindus. *V. Historia Wambae Regis*, auctore Iuliano ep. Tol., MGH, *SS. rerum Merovingicarum* t. V, 505 (*c.* 6) and 532 (*c.* 3).

[41] Cf. canon 9.

General Excellence of the Episcopacy

However, the episcopacy as a whole in the Visigothic Kingdom remained at a high moral and cultural level. The fact that conditions in Spain were less corrupt than in the other Germanic kingdoms was probably due to the relatively high culture of the Goths and to the close alliance which the kings sought with the Church as a means of maintaining their supremacy against the nobility. The sovereigns must have realized that the elevation of unworthy men to the episcopacy would have meant playing into the hands of the nobles. At any rate their choice of candidates was for the most part very happy. Many of them were taken from the monasteries, where they had received excellent ecclesiastical training.[44] Several worthy Gothic bishops were trained in monasteries. Among these were Fructuosus of Braga, scion of a noble family; Heladius of

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[42] Merida (666), canon 15; Toledo XI (675), canons 5 and 7. This matter will be discussed in a subsequent chapter.

[43] There are sixteen distinctly Gothic names signed to the acts of the Fourth Council of Toledo (633) among a total of sixty-two.

[44] Throughout the Visigothic period monastic life flourished in Spain. Spanish monasticism differed from that in the rest of the Occidental Church inasmuch as it did not follow the Benedictine rule. Unlike monasteries elsewhere those in Spain were not immune from episcopal control. In fact the abbots were appointed by the bishops (cf. Toledo IV, canon 5). Among the great names connected with monasticism in Visigothic Spain were Martin of Dumio and Braga, Leander and Isidore of Seville, Fructuosus of Braga, and Valerius, abbot of S. Petri de Montibus. It is not certain that Isidore was a monk himself, but he drew up a monastic rule and founded various convents. Fructuosus was the Spanish Columbanus or Benedict. Cf. Pérez Pujol, III, 143-199, for a discussion of monasticism in Visigothic Spain.

Toledo, himself at one time a palatine official; and Ildephonse of Toledo, theologian and author.[45]

Besides being good churchmen and dependable advisers of the kings many of the Spanish bishops were scholars and writers. Monastery and cathedral schools flourished.[46] Churchmen displayed a fine zeal in copying manuscripts and collecting libraries.[47] The literary tradition persisted throughout the Visigothic period, and there seems to have been no decline in learning as the kingdom drew to its close. Isidore of Seville lived until 636 and his genius continued to dwell in the Gothic Church. Braulio, bishop of Saragossa, the greatest Spanish ecclesiastic in the period following the death of his friend Isidore, wrote excellent Latin as his numerous letters prove,[48] and he was versed in the Latin classics.[49] Braulio's successor in Saragossa about the middle of the seventh century, Taio, contributed to theology his *Five Books of Sentences.*[50] He was no mean precursor of Peter Lombard.

In the see of Toledo there was a series of brilliant ecclesiastics. Eugene I in the reign of Chintila (636-640) impressed his contemporaries with his great knowledge regarding the moon. Eugene II, archdeacon to Braulio, called by Chindaswinth (642-653) to the see of Toledo, was a poet of ability and an admirer of the classics.[51] Ildephonse under Receswinth (649-672) wrote theological treatises and a *De viris illustribus,* which is our source of information regarding a number of the Spanish prelates.[52] Bishop Julian (680-690) wrote a history of part of the reign of King Wamba (672-680) and several theological and apologetic works.[53] His Latin is admirable, and some of his treatises bear Greek titles. Felix, a successor in the see of Toledo, wrote a short life of Julian.[54]

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[45] Cf. Pérez Pujol, III, 112-113.

[46] *Ibidem,* pp. 489 ff.

[47] *Ibidem,* pp. 512 ff.

[48] Migne, *P. L.,* LXXX, 650-700.

[49] Cf. *Ep.* XI.

[50] *Sententiarum libri quinque,* Migne, *P. L.,* LXXX, 727-790.

[51] For his writings cf. MGH, *Auct. antiq.* t. XIV, 229 ff.

[52] For his works cf. Migne, *P. L.,* XCVI, 84 ff.

[53] Cf. Migne, *P. L.,* XCVI, 454-808.

This is by no means an exhaustive list of the bishops in Visigothic Spain who were scholars and authors, but these names suffice to show that learning was cherished in the Visigothic Church. The kings in relying on the bishops found advisers that were as intelligent as they were upright.[55] The zeal of the bishops for the doctrines of the gospel, their veneration for Roman law, their high moral repute, and their intelligence, gave them an influence which was a strong bulwark against the anarchy of the Gothic nobility. To them is due in great measure the credit for the high level of civilization to which the Gothic Kingdom rose.

The Metropolitans

Among the bishops those occupying metropolitan sees held a position of pre-eminence. They with their suffragans enjoyed, at least originally, the right of approval in regard to candidates chosen by the people and the clergy for bishoprics within their respective provinces; they also designated the place of episcopal consecration. Within their provinces they were the highest ecclesiastical judges. Their rights included that of summoning provincial councils and presiding at them, and one of their number presided at the national councils. Probably because of their personal prestige Leander and Isidore discharged this function at the Third and Fourth Plenary Councils respectively, although it is true that their see of Seville enjoyed a certain prominence in early Spain. Thereafter this honor was generally vouchsafed to the metropolitan of Toledo, who became virtually the primate of Spain.

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[54] Cf. *Acta sanctorum*, Martii t. I, 784-785.

[55] Pérez Pujol gives a rather good sketch of the literary activities of the bishops (III, 537 ff). A number of works accredited in Migne to Spanish prelates of this period are not authentic. Potthast, *Bibliotheca historica medii aevi* is helpful in checking these works.

The Metropolitans of Toledo

The honors granted to the bishops of Toledo were closely bound up with the fact that the city was also the seat of royalty. It was accordingly the privilege of these metropolitans in the later days of the kingdom to anoint the new Gothic sovereigns. The intimate connection between sovereign and metropolitan also appears when we find the Seventh Council (646) providing that out of respect for the king and for the consolation of the metropolitan the bishops of the neighboring cities should at the invitation of the bishop of Toledo spend some time each month ("*singulis per annum mensibus . . . debeant commorari*"), with the exception of harvest and vintage season, in the capital city.[56]

The most extraordinary power which the metropolitan of Toledo received was that granted by the Twelfth National Council (681) by which he was accorded the right to place in vacant sees of the various provinces bishops chosen by the king and approved by himself.[57] This canon raised the metropolitan of Toledo to a position of unprecedented power, making him in fact primate of the Spanish Church. Gams sees in this legislation the overweening ambition of the new metropolitan of Toledo, Julian, who, he maintains, made the most of Erwig's dependence as an opportunity for self-aggrandizement.[58] The power enjoyed by the bishop of Toledo under this canon would seem to depend on the strength of the reigning king as compared with his own. The king was to choose the candidates for bishoprics, but the metropolitan had the right of approval and, presumably, of disapproval. The latter consecrated and sent the bishops to their dioceses. Certainly this gave him tremendous power. The provision that a new bishop must report to the metropolitan of his province within three months was the only acknowledgment which the canon paid to the rights of the other metropolitans. The reason given for this centralization of power was that the appointment of bishops might be expedited. The signatures of the bishops as given by Mansi do not bear out Gams' statement that the other metropolitans ceased to sign the conciliar acts as metropolitans and left this title for Toledo alone.[59] Gams' theory in regard to Julian's ambitions seems plausible, but our evidence is too meager to confirm it. Neither do we know whether the system worked for the good or ill of Spain, since the innovation was made only on the eve of the Moorish invasion.

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[56] Canon 6. These episcopal gatherings show a resemblance to the *synodoi endemousai* peculiar to Constantinople; *v.* Hefele-Leclercq, I, i, 7.

[57] " . . . Unde placuit omnibus pontificibus Hispaniae atque Galliae, ut salvo privilegio uniuscujusque provinciae licitum maneat deinceps Toletano pontifici, quoscumque regalis potestas elegerit et jam dicti Toletani episcopi judicium dignos esse probaverit, in quibuslibet provinciis in praecedentium sedibus praeficere praesules, et decedentibus episcopis eligere successores" (canon 6).

[58] *Die Kirchengeschichte von Spanien*, II, ii, 177 f., and 214 ff.

It would be a mistake to think that the dignity of the metropolitans of Toledo was entirely borrowed from the glory surrounding royalty. The see was blessed, as we have seen, in having as its incumbents for the most part men of strong character: Heladius, the two Eugenes, Ildephonse, Julian (who surpassed all in ability, though he may have been ambitious), Felix, and Gunderic.[60]

The Visigothic Church and the Holy See

This perhaps is the best place to refer to the relations between the Spanish Church and the Holy See during the Visigothic period. The contracts were extraordinarily few, fewer by far than those between Rome and the Anglo-Saxons and Franks in the same period, though in the century before the Gothic invasion relations between the bishop of Rome and Spain had been quite normal.[61] This may be attributed to the difficulty of communication across the pirate-infested Mediterranean, or to the reluctance of the kings to have their bishops communicate with Rome, which acknowledged the sway of Ravenna and the Eastern Emperor.[62] The conversion of the Goths (*ca.* 589) brought several letters from Gregory the Great, but after his death (604) to 711 there is record of only eight papal letters sent to Spain. In the meager correspondence on the part of the Spanish Church the bishop of Rome was always addressed with titles of greatest respect and his decrees and decisions were cited as authoritative; it is quite apparent that he was considered head of the whole Church.[63]

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[59] *Ibidem*, pp. 218-221.

[60] For a fuller discussion of the "Archbishopric" of Toledo *v.* Magnin, *L'Église wisigothique*, I, 97-105.

[61] *V.* Magnin's chapter, "Rome et L'Église wisigothique." *op. cit.*, pp. 1-31; Paul Séjourné, *Saint Isidore de Séville*, pp. 86 ff.

One striking instance of the Spanish recognition of the authority of the Holy See was the answer of Bishop Braulio to a letter which Honorius I had sent to the Spanish prelates. The letter of the pope is not extant and our knowledge of its content is wholly dependent on the reply. It can be gleaned from this that the pope urged the clergy of the Peninsula to be "*robustiores pro fide et alacriores in perfidorum rescindenda pernicie,*" and chided them with being "*canes muti non valentes latrare.*"[64] Just what their negligence was is a matter of conjecture; the interesting thing is that the prelates at the Sixth Council of Toledo (638) delegated Braulio to answer it, which he did with abundant recognition of papal authority, and with a testiness and an air of injured innocence that lends weight to this recognition.

The promulgation of the Sixth General Council (Constantinople, 680-681) brought the popes again into contact with Spain.

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[62] Cf. L. Duchesne, *Christian Worship*, tr. by M. L. McClure, pp. 40-41. The translation ludicrously transposes the reference words of the original in his use of "former" and "latter" making the Merovingian Church more centralized than the Visigothic (p. 41).

[63] Magnin, I, 7-9 and 13 ff. The letter attributed to Isidore (*Ep.* VIII, Migne, *P. L.*, LXXXIII, 908) purporting to be an answer to a Bishop Eugene, who maintained that Peter was not the primate among the apostles, is apocryphal or at least interpolated (cf. Séjourné, pp. 94-95; Magnin, I, 12).

[64] Braulionis *ep.* XXI, Migne, *P. L.*, LXXX, 667-670.

Pope Leo II sent four letters to the Visigothic Kingdom on this matter: one to all the bishops, others to a Bishop Quiricus, a Count Simplicius, and King Erwig.[65] Another letter was written by Benedict II to the papal envoy, Peter, urging him to expedite the acceptance of the council in Spain. All the bishops could not be conveniently called together, since a synod had been held only a year before (681), but the Fourteenth Council was convoked in Toledo and representatives of the other metropolitans attended. The Sixth Ecumenical Council was approved by the assembly, and Bishop Julian of Toledo was entrusted with the duty of forwarding a statement of the fact to Rome. Pope Benedict felt that some of Julian's terms smacked of error and requested that they be emended. This brought a brisk apology of his position by Julian—the Fifteenth Council of Toledo records Julian's defence[66]—based on the teaching of the Fathers and couched in language of considerable effrontery. According to a record of the middle of the next century Rome received the apology with good grace.[67]

The fact that while the Spanish prelates recognized the authority of the Holy See, they were inclined to take offence at the intervention of Rome in their own ecclesiastical affairs was not a good sign from the viewpoint of Catholicity. Gams insists very emphatically that Julian's attitude toward Rome was leading to schism.[68] The comparative isolation of Spain from the rest of the Christian world, the peculiar union of Church and State, the identification of the interests of Church and State and the mixing of spiritual and civil matters, the acknowledged powers of the king in the sphere of religion, the participation of bishops in secular and civil affairs, the magnified importance of the national councils and of the metropolitan see of Toledo, all served to give the Visigothic Church a character self-contained and self-sufficient to a degree not found elsewhere. There was a trend in the Spanish Church that might be called Hispanism. It did not forbode good.[69]

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[65] Mansi, XI, 1050-1058.

[66] Mansi, XII, 10-17.

[67] *Continuatio Isidoriana Hispana*, 26 (MGH, *Auct. Antiq.* tomus XI). On this whole matter, *v.* Magnin, I, 23-30 and his references; Gams is here as elsewhere very hostile in his treatment of Bishop Julian (II, ii, 228 ff.).

[68] *Op. cit.*, II, ii, 237.

Summary

The purpose of this chapter was to indicate the chief points of contact, namely, the councils and the episcopate, between civil and ecclesiastical society in the Visigothic State, and the peculiar turn which this contact gave to certain institutions, especially the primacy of the See of Toledo. An understanding of this close relationship between the civil and the ecclesiastical powers, between the head of the State and the primate of the Church, lies at the root of all further discussion of Visigothic history and life. The conversion of ruler and people to Catholicism made no essential difference in the character of the Visigothic State. As well after as before all power rested in the hands of the king; the union with the Church merely afforded the king a means to make that power more effective and more thorough. In availing himself of this means to promote the purposes of the crown the king entered into closer relations with the Church, and what the results of these relations were will be the subject of the succeeding chapters. The Church actually possessed very considerable powers in civil affairs. These powers were acquired not through usurpation, but at the insistence of the rulers. The convoking of ecclesiastical councils had the effect of assembling a civil parliament as well as a

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[69] The development of a national liturgy in Spain, called variously the Gothic, Toletan, Isidorian, and Mozarabic, can in nowise be used as an argument that the Church itself was becoming national. The movement toward unity of liturgy in the West, which received such an impetus from Charlemagne, had not yet arisen. The same argument which might be adduced in favor of the nationalization of the Church in Spain from the possession of a national liturgy might be used with equal force in the case of Milan or of Gaul.

Church synod; and the decisions of the councils had the strange character of being partly civil and partly ecclesiastical, with the important distinction, however, that the ecclesiastical as well as the civil had the force of statute law for all living within the kingdom.

Whatever opinions may be held regarding the participation of ecclesiastics or of the Church as a whole in the civil affairs of any nation, it cannot be denied that the presence of the bishops at those councils had the result of placing the legal code of Visigothic Spain on a philosophical basis and of resting it on principles which expressed to a very large degree the social doctrines of the Christian religion. The enactment of laws by the synods did not have the necessary result of making the Church an integral or essential part of the civic administration, but it did introduce into the laws principles of morality and justice which must ultimately have resulted in the greatest benefit to all the people of Spain.

It must not be understood that the constitution and laws of the Visigothic Kingdom represent the final expression of a Christian philosophy of the society of the State. Much is found which might naturally be expected to have been reformed by the bishops. But the results as exhibited in the code represent a decided advance in the nature and purpose of Gothic civilization, which reflects the utmost credit on the bishops and councils. The code does bear the impress of the close relation between Church and State. There can be no doubt but that the humanity and the regard for personal and individual right which appears in many of the enactments is traceable directly to ecclesiastical influence. How far this influence failed and how far it succeeded will be dealt with in later chapters.

CHAPTER III

The Visigothic Code of Civil Law

I. *Evolution of the Leges Visigothorum*

No study of Visigothic institutions would be complete without a chapter devoted to Visigothic law. The civil law is the most important source for our knowledge of the kingdom. It is a monument on which is engraved much of the political, economic, social, and religious history of Gothic Spain, the most enduring monument of Visigothic civilization, concrete evidence even now of what that civilization was. It is especially important as a reflection of the relations between Church and State. The Visigothic State was subject to many influences. The form it finally attained was the result of these influences working from within and without, and the clearest expression of the process of adjustment is that found in the legal code. Practically every step in the transformation by which the Arian barbarian horde which invaded Spain became the compact Catholic Kingdom of the Visigoths was registered in some fashion in the body of law that made up their legal system.

Though the Romanization of Gothic law had begun long before the Goths had forsaken Arianism, it is to be noted that the Roman influence came principally, if not solely, from the Catholic provincials. Closer contact with the Church after the conversion to Catholicism resulted in a more thorough Romanization of their law, for the Church lived according to Roman law and churchmen knew it best. Yet the law did not by any means become entirely Roman; the kingdom remained Gothic and many traces of old Teutonic custom survived.

The Church and the rulers collaborated very intimately in producing the law of the kingdom. Church councils were asked by several kings to assist in revising the laws. Conciliar canons were taken into the civil code; civil laws were approved and adopted by the councils. The kings legislated in spiritual and ecclesiastical matters and added the sanction of the secular arm; ecclesiastical synods regulated civil affairs with spiritual penalties. The civil code is shot through with philosophy because clerics, the only philosophers of the time, were the *jurisprudentes.* The royal laws quote Scripture and launch into many a sermon. And yet the civil law was by no means a perfect reflection of the spirit of the Church, not even of the Visigothic Church, for the kings actually ruled and legislated, while the bishops were counsellors at best. But in an age when the lamp of European civilization burned low the light that diffused itself through the pages of the Visigothic Code was brighter because churchmen, the cultured element in the kingdom, sat in the legislative councils of kings.

The form in which the Visigothic law has come down to us leaves many problems still unsettled; without the critical labor which has been expended on the text in recent years much of it would be unintelligible. Hence it will be necessary to make clear the manner in which Visigothic law developed and the present condition of the texts before proceeding to draw on them as sources of history. A brief survey of the evolution of Visigothic legislation will serve the present purpose. Thorough critical monographs are available to anyone desiring to investigate further.[1]

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[1] Zeumer has a succinct but masterly discussion of the evolution of Visigothic law in the "Prefatio" to his edition of the *Leges Visigothorum* (MGH, *Legum* sectio I, tom. I), pp. xi-xxvii; he presents a more detailed treatment of the subject, "Geschichte der westgothischen Gesetzgebung I," *Neues Archiv,* XXIII, 421-516, on which this survey is chiefly based. A study of considerably more ample proportions is Ureña y Smenjaud, *La legislación gótico-hispana* (588 pages). The first volume of the Continental Legal History Series, *A General Survey of Continental Legal History,* contains a chapter on Spanish law by Rafael Altamira (pp. 579 ff.). He discusses the evolution of Visigothic law briefly but carefully (pp. 594-601). The valuable article by H. D. Hazeltine, "Roman and Canon Law in the Middle Ages," *Cambridge Medieval History,* V, 697-764

King Euric's Codification for the Goths

The earliest Visigothic codification, which has come down only in part, in fact the earliest extant Germanic code, was framed (*ca.* 475) at the order of King Euric.[2] Like practically all the codes promulgated in the early Germanic kingdoms, that of Euric must have begun with the name of the law-giving ruler and a definition of the persons subject to its jurisdiction. It can safely be assumed that it was meant to govern legal relations between Goths, and also between Goths and Romans. The latter part of this assumption is explicitly confirmed for certain cases by several *capitula* of the code itself,[3] and there is no reason to suppose that these were exceptions. The principle that in cases involving a Roman and a barbarian a defendant was

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(chap. xxi), also deals briefly with the history of Visigothic law (pp. 726 f., and 744 f.). For further literature, *v.* the bibliography attached to the short discussion of Visigothic legislation in Schröder-Künssberg, *Lehrbuch der deutschen Rechtsgeschichte*^{6}, pp. 252-255.

[2] Isidore of Seville in his *Historia Gothorum* (written *ca.* 624) says that before Euric the Goths had no written laws (*cap.* 35), but in this he errs, since Euric's own code makes reference to laws of his father, Theodoric I, and perhaps to those of other predecessors; in fact there may well have been even a Gothic code, though of lesser proportions, before that of Euric (*v.* Zeumer, "Geschichte der westgothischen Gesetzgebung," *Neues Archiv*, XXIII, 440). Portions of Euric's collection survive in a Paris palimpsest which contains fragments of chapters 276-336 (*Paris. Lat.* 12161; cf. Ureña y Smenjaud. *La legislación gótico-hispana*, pp. 27-33). These have been restored by comparison with the *Lex Baiuvariorum*, which adopted laws from Euric's compilation. Other laws from this early code embedded in later Visigothic codifications have been identified by comparison with the Bavarian collection. The fragments of Euric's codification with the restorations are edited by Zeumer, *Leges Visigothorum*, pp. 3-32. It is important to note in passing that several of the other barbarian codes, the Salic, Burgundian, Alemannic, as well as the Bavarian, were modelled at least in part after the statutes of Euric (cf. Schröder-Künssberg, *Lehrbuch der deutschen Rechtsgeschichte*^{6}, pp. 252, 256, 260, 269, 271; concerning the influence on the Bavarian law cf. von Schwind, "Kritische Studien zur Lex Baiuvariorum, I," *Neues Archiv*, XXXI. 405-415).

[3] *C.* 276, 277, 304, 312; and *Leg. Vis.*, X, 1, 8; 9; 16; 3, 5—which were originally in the laws of Euric.

judged according to his own law, i. e., the principle expressed in the axiom, "*actor sequitur forum rei,*" was an invention of the Franks and probably grew out of conditions peculiar to their kingdom.[4]

In nature Euric's code was largely Roman. The codification was, doubtless, rendered necessary by the fact that the old Gothic customs had become inadequate for the new life into which the nation had been suddenly introduced. The Goths had settled down among a more numerous Roman population and become owners of land individually. Perforce they adopted Roman laws on private ownership of real property, since their own law did not know this institution. Realizing the superiority of Roman law they made much of it their own: thus they introduced written documents for many of their transactions, testamentary law, lending at interest, and regulations concerning the matrimonial impediments of consanguinity and affinity.[5] Then, too, for the comparatively elaborate codification Euric had to have recourse to Roman *jurisprudentes,* one of whom, Leo, the Catholic counsellor of the king, we know by name.[6] As a result the tone of their work was dominantly Roman. However, as has been remarked in a preceding chapter, the Visigoths did not surrender so completely to Roman influences, legal or otherwise, as did their cousins the Ostrogoths.[7]

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[4] Cf. H. Brunner, *Deutsche Rechtsgeschichte,* I^2, 383-384; Zeumer, *N. Arch.,* XXIII, 471; cf. *Lex Burgundionum Gundobadi,* I, 3 (MGH, *Legum* sectio I, tom. II, pp. 30-31), which was probably modelled after Euric's code.

[5] Cf. Zeumer, *N. Arch.,* XXIII, 469. For the specific *capitula* taken over from Roman law and references to the Roman sources: Paulus and the Theodosian Code, cf. Claudio Baron de Schwerin, "Notas sobre la historia del derecho español mas antiguo," tr. by. R. Carande, *Anuario de historia del derecho español,* I (1924), 39-40. Von Schwerin thinks that the use of documents may have been adopted from the Byzantines before the westward migration (*v.* p. 43).

[6] Zeumer, *N. Arch.,* XXIV, 119-120.

[7] For references to German survivals in Euric's laws cf. von Schwerin, *op. cit.,* p. 45.

The Lex Romana Visigothorum Granted by Alaric II to His Roman Subjects

Aside from their dealings with the Goths the Roman provincials were permitted to live according to their own law. The old Roman law could not, however, be made applicable to the needs of the subject people and to meet the situation Alaric II, son and successor of Euric, ordered a commission of *jurisprudentes* composed of Gallo-Roman bishops and noblemen to revise the code. It seems quite probable that Alaric gave this code as a propitiatory gesture toward his Catholic Roman subjects, whose loyalty he needed in his war against the Franks. The compilers of the work used as their sources the Theodosian, Gregorian, and Hermogenian Codes, the *Novels* of Theodosius II and his successors to Severus, and the writings of Gaius, Paulus, and Papinian. Large parts of the Theodosian Code were taken over and its division into sixteen books was retained. Most of the legislation of this code which was favorable to the Catholic Church was excluded from the new compilation. With the exception of Gaius the texts of the new code were copied verbatim from the older documents. The *Institutes* of Gaius appear in Alaric's code in an altered and abbreviated form which was current at the time. To the laws, with the exception of Gaius, are added *interpretationes,* i. e., brief and greatly simplified explanations. They also were found for the most part in contemporary legal literature.

This code was promulgated by Alaric at Aire-sûr-l'Adour in 506. It is ordinarily referred to as the *Lex Romana Visigothorum* or the *Breviarium Alaricianum,* but many other names have been applied to it.[8] The *Breviarium* remained in force in the Visigothic Kingdom, as the code under which the Romans lived, until the middle of the seventh century, when Receswinth introduced the *Liber iudiciorum* (654) for all his subjects.[9]

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[8] The edition of the *Breviarium* by G. Haenel, *Lex Romana Visigothorum* (Leipzig, 1849), remains the standard. There is no edition in MGH. M. Conrat's *Breviarium Alaricianum: Römisches Recht im frankischen Reich in systematischer Darstellung* (Leipzig, 1903), as the name implies, groups under logical headings the laws scattered through the code. There

It is interesting to note that the only extant piece of Visigothic legislation for the period between Alaric II and Leovigild, a decree of Theudis (546) on the expenses involved in judicial proceedings, was intended for both Romans and Goths.[10] The anomalous condition of maintaining two different codes of law among people living in the same country and obeying the same ruler could not continue indefinitely. Long before a single code was adopted adjustments had to be made, which all tended in the direction of a unified legal system.

Leovigild's Revision of the Gothic Code and the Gradual Unification of Law in the Kingdom

According to Isidore King Leovigild (568-586) revised Euric's code, making corrections, additions, and omissions.[11] Though no manuscript of Leovigild's code is extant, certain laws incorporated into the *Liber iudiciorum* by Receswinth in

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is a wealth of literature on the *Breviary: v.* the *Prolegomena* of Haenel's edition, pp. v-xl, and Ureña y Smenjaud, *op. cit.*, pp. 39-42; 296-320.

[9] In other parts of Mediaeval Europe it was used until a much later date, and its influence in the spread of Roman law in the Middle Ages was paramount. Cf. von Wretschko, "De usu Breviarii Alariciani forensi et scholastico per Hispaniam, Galliam, Italiam, regionesque vicinas," in *Theodosiani libri XVI* (Mommsen-Meyer ed., Berlin, 1905), I, ii, cccvii-ccclxxvii.

[10] It was discovered in a manuscript of the *Breviarium*, and there can be no doubt that it was issued for the Goths as well as the Romans. The law is edited by Zeumer, *Leges Visigothorum*, pp. 467-469. Its introduction is unfortunately fragmentary. Cf. Zeumer. "Das Processkostengesetz des Königs Theudis," *N. Arch.*, XXIII 77-102.

[11] "In legibus quoque ea quae ab Eurico incondite constituta videbantur [Leovigildus] correxit, plurimas leges praetermissas adiciens, plerasque superfluas auferens" (*Historia Gothorum*, 51). That Isidore can be taken as an authoritative witness regarding the promulgation of this law is clear from the fact that if he did not remember it himself he certainly knew many people who did, and that as the most prominent ecclesiastic

654 [12] as *Antiquae* are considered to have been drawn from the code of Leovigild.[13] These *Antiquae* still distinguish between Goths and Romans as Euric's laws had done,[14] but they make it evident that the Romans no longer needed special legal protection against their favored Gothic neighbors.[15] A significant change in the law and an indication of the tendency toward the amalgamation of the two peoples is found in the provision that both were to be judged by the same civil magistrates.[16] Most important as an indication of the amalgamation of the two races was the fact that Leovigild legalized matrimony between Goths and Romans.[17] He likewise furthered the Romanization of the law. In regard to inheritance, sons and daughters were placed by him on the same basis;[18] it was probably he who included the seven *capitula* which specify the Roman degrees of relationship,[19] and several other laws borrowed from the *Lex Romana Visigothorum*.[20]

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in Spain his information concerning the civil code of his time must have been exact and complete. It is interesting to note that the code of Leovigild influenced the Lombard *Edictus Rothari* (cf. *N. Arch.*, XXIII, 428-429; Schröder-Künssberg, p. 243).

[12] Manuscripts of this are extant: *Vat. Reg. Christinae*, 1024; *Paris. Lat.*, 4668.

[13] These various laws are referred to by Zeumer as the *Codex revisus* of Leovigild.

[14] Cf. *Leges Visigothorum*, III, 1, 1; X, 1, 8; 9; 16; X, 2, 1; X, 3, 5.

[15] *V.* the modification which *Leg. Vis.*, V, 4, 20 (*Antiqua*) makes in *c.* 312 of Euric; cf. *N. Arch.*, XXIII, 434-435; 477.

[16] The Goths could no longer have recourse to their *millenarii*, or *thiufadi*, as judges in civil life; cf. *Leg. Vis.*, IV, 2, 14 and *c.* 322 of Euric.

[17] *Leg. Vis.*, III, 1, 1.

[18] *Leg. Vis.*, IV, 2, 1; cf. *N. Arch.*, XXVI, 95-99.

[19] *Leg. Vis.*, IV, 1, 1-7 (based on the *Sentences* of Paul contained in the *Breviarium*).

[20] *Leg. Vis.*, V, 5, 9; VII, 2, 18; 5, 6; IV, 4, 1; V, 7, 2; VI, 4, 2; VII, 2, 10; 5, 1. Cf. *N. Arch.*, XXIII, 431-432.

The *Fragmenta Gaudenziana*, so called from Auguste Gaudenzi, who discovered them, are fourteen *capitula* or laws which probably were issued for the people of Septimania by a Visigothic governor of that province in the reign of King Leovigild. The text of these laws is available in Zeumer's *Leges Visigothorum*, pp. 469-472. Scholars differ considerably as

As regards legislators after Leovigild, the *Liber iudiciorum* of Receswinth attaches the names of the respective rulers to the laws introduced by them. The tendency toward unity of code noted in Leovigild's laws continued under succeeding kings. Three laws of Recared (586-601) show him ignoring the distinction between Goths and Romans. One of them, on respect for womanly chastity, was addressed to all his subjects[21]; a second was designed to protect people from the oppression of the magistrates[22]; the third dealt with the Jews, who actually lived under the *Lex Romana.*[23] These laws show that besides the separate codes in force for the Goths and Romans there was a new law in process of formation which was to govern all the people of the kingdom. This process of unifying the civil law was greatly simplified by the fact that the conversion of the Goths under Recared had united the nation in religion, and that the Church councils in their ecclesiastical and civil canons bound Goth and Roman alike. Receswinth's code also contains two laws of Sisebut (612-621) directed against the Jews.[24] The Visigothic legal *formulae,* which date from Sisebut's reign, likewise reveal a mixture of Roman and Gothic customs for the use of all persons in the kingdom.[25]

The Liber Iudiciorum: a Single Code for Goths and Romans

All the tendencies and efforts to establish a unified code for the kingdom and to place Goth and Roman under one law culminated in the *Liber iudiciorum,* or *Forum iudicum,* promul-

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to the date of this legislation; cf. *ibid.*, p. xvi; *N. Arch.*, XXIII, 465-467, and the literature cited.

[21] *Leg. Vis.*, III, 5, 2.

[22] *Leg. Vis.*, XII, 1, 2.

[23] *Leg. Vis.*, XII, 2, 12; cf. *Lex Rom. Vis.* (*C. Th.*), II, 1, 10.

[24] *Leg. Vis.*, XII, 2, 13; 14.

[25] Cf. Zeumer, *N. Arch.*, XXIII, 479; *idem*, "Formulae Visigothicae," MGH, *Formulae Merovingici et Karolini aevi*, pp. 574 ff.

gated by Receswinth.[26] This codification, it seems certain, was planned by his father, Chindaswinth, who evidently saw the necessity of a single code for his people. The so-called *Lex quoniam* of Receswinth, the decree by which he promulgated his code, appears to imply that Chindaswinth had undertaken this work in the second year of his reign (643).[27] In preparation for this new code he had framed many laws and perhaps put them into a *codex* with the earlier law, but he evidently stopped short of promulgating his collection.[28] His admirable legislation in regard to the administration of justice, which will be discussed later,[29] applied to all his subjects, since Goths and Romans had long frequented the same legal tribunals. In framing his laws he borrowed from both Gothic and Roman sources. Thus he based a law in regard to dowry on the old Germanic idea of that institution, though in this very law he also made use of a point in Roman legislation.[30] By fusing into a code such pieces of both Gothic and Roman law as seemed good to him Chindaswinth apparently sought to produce a law book that would satisfy the two races of his kingdom. The new code was brought to completion and promulgated by Receswinth probably in the first part of the year 654.[31]

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[26] *Liber iudiciorum* is the name given in the oldest MS. Other MSS give various names: *Liber iudicum, Liber iudicis, Forum iudicum.* The last title gave rise to the Castilian *Fuero juzgo;* it is much used in references to the Visigothic Code.

[27] *Leg. Vis.*, II, 1, 5.

[28] Cf. *N. Arch.*, XXIII, 483-484; 511-516.

[29] Cf. *Leg. Vis.*, *liber* II.

[30] *Leg. Vis.*, III, 1, 5. *Leg. Vis.*, II, 1, 12; VI, 2, 1; 3, are taken from Roman models. *Leg. Vis.*, VI, 1, 4, is directly from a law of Euric. *Leg. Vis.*, IV, 2, 5 and 8, are Gothic in spirit. *Leg. Vis.*, VI, 4, 1 and 3, introduce Germanic *wergeld* and composition.

[31] The *Liber iudiciorum* did not appear before 652, since one of its laws is an edict which Receswinth presented at the Eighth Council of Toledo held in that year (*Leg. Vis.*, II, 1, 6). In his *tomus* to this council the king asked the assembly to aid him in revising the laws: ". . . in legum sententiis, quae aut depravata consistunt aut ex superfluo vel indebito coniecta videntur, nostrae serenitatis accomodante consensu, haec sola, quae

In the *Lex quoniam* the *Liber iudiciorum* was made the law of the land: "*. . . leges . . . in hoc libro conscriptas . . . in cunctis personis ac gentibus nostre amplitudinis subiugatis omni robore valere decernimus.*"[32] A further law explicitly forbade the use of any other legal code in the courts of the kingdom,[33] and a third decree laid a heavy fine upon anyone who should present another code as authority in court and a similar penalty on a judge who should fail to confiscate such a code.[34] Judges were not even left free to apply other law when the code proved inadequate for certain cases, but were to refer them to the king. This prevented the use in the courts of law based on custom.[35] Undoubtedly, too, it excluded the use of conciliar decrees there, unless they had been taken into the civil code or the king had confirmed the legislation of the council by special enactment. The new code was made applicable to all cases begun but still in progress. Cases already decided according to other codes were explicitly excepted.[36] The king reserved to himself the right to add other laws which he might deem necessary.[37]

This most important measure of Receswinth in putting an end to a double system of law within the kingdom was the legal culmination of what had been developing through many decades, the union of the barbarian and the Hispano-Roman into one people. As well as being an index of what had already occurred in the fusion of races the single law code was itself without doubt a most powerful factor in the furtherance of union. The most noteworthy immediate result of the promulgation of the new code was the abrogation of the *Breviarium Alaricianum*

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ad sinceram iustitiam et negotiorum sufficientiam conveniunt, ordinetis" (Zeumer, *Leges Visigothorum*, p. 474). The last *capitulum* of his code was the *placitum* of the Jews, which is dated February 18, 654. Probably Receswinth promulgated his revision shortly after this date (cf. *N. Arch.*, XXIII, 486). The text of Receswinth's *Liber iudiciorum* without later additions was edited by Zeumer, *Leges Visigothorum antiquiores* (1894).

[32] *Leg. Vis.*, II, 1, 5.

[33] II, 1, 10.

[34] II, 1, 11.

[35] II, 1, 13.

[36] II, 1, 14.

[37] *Loc. cit.;* cf. II, 1, 5 *in fine.*

after nearly a century and a half of use as the law of the Romans in the Visigothic Kingdom.

As for Receswinth's own laws, several of them, we have seen, were devoted to the introduction of the new code; a considerable number were aimed to carry out Chindaswinth's project of reform in regard to the administration of justice; others were scattered here and there through the code, notably some dealing with such civil matters as documents, wills, and inheritance, and, of course, the provisions of his anti-Jewish policy. The *Liber iudiciorum* contained ninety-eight laws of Chindaswinth and eighty-nine of Receswinth. Apparently in lieu of any other method of causing the laws to be published through the kingdom Receswinth placed a price of six *solidi* on copies of the code, and to prevent profiteering threatened anyone who accepted or paid a higher price with one hundred lashes.[38]

The History of the Liber Iudiciorum after Receswinth

The revision of the law by Receswinth was by no means the final word in Gothic legislation. Wamba (672-680) added only a few *capitula,* but Erwig (680-687) executed another and rather searching revision. He began almost immediately after his elevation by proposing his twenty-eight anti-Jewish laws to the Twelfth Council of Toledo (681) for approval. To the same council he suggested a change in a too severe law of Wamba regarding service in the army and extended an invitation (like that of Receswinth to the Eighth Council) to amend the laws in accordance with reason and justice.[39] It seems improbable that he had his new code ready at this early date; he evidently was inviting the council to participate in the preparation of it. About the end of his first year as sovereign, on

[38] V, 4, 22.

[39] "Nam et hoc generaliter obsecro, ut, quidquid in nostrae gloriae legibus absurdum, quidquid iustitiae videtur esse contrarium, unanimitatis vestrae iudicio corrigatur" (*tomus* presented to Toledo XII; cf. Zeumer, *Leges Visigothorum*, p. 476).

October 21, 681, he promulgated his revision of the *Liber iudiciorum* and made it the law of the land.[40] The price of a copy was placed at twelve *solidi,* double that set by Receswinth.[41]

Erwig introduced an edict of promulgation, called the *Lex pragma* from its opening word,[42] and, of course, eliminated Receswinth's similar decree. He inveighed against obscurity in the law as the source of many evils and vowed amid much rhetoric to rid the code of this by correcting existing legislation and adding some of his own. As a result of his revision Erwig omitted several laws, chiefly certain ones made by Receswinth, in some instances replacing them with other legislation; he likewise added four new laws besides his twenty-eight decrees in regard to the Jews, and introduced three enactments of Wamba. His principal work, however, consisted in a painstaking revision of a very large number of the existing laws. These were corrected according to his own lights, or rather according to the standard of his juridical commission; obscure passages were explained and additions made. It was a greatly modified *Liber iudiciorum* that came from his hands. The speed with which the work was done naturally left it with many defects. Sometimes obscure passages were made more obscure and wordiness became more wordy. The Jewish legislation was fanatical in the extreme, but otherwise his revision reflects a desire to be benevolent and mild.[43]

Egica, the next sovereign (687-702), displayed considerable interest in legislation. The invitation contained in his *tomus* to the Sixteenth Council of Toledo requesting the bishops to remedy defects in the canon and civil law sounds like the prelude of a rather ambitious legislative project.[44] Inasmuch as this request to the council approved of the laws from Chindaswinth to Wamba it was evidently directed at the legislation of Erwig. In fact Egica did make several laws which contradicted legislation of Erwig, but opinions differ as to whether he actually promulgated a new code.[45] As for the nature of Egica's enactments they show besides a tendency to change some of Erwig's laws an effort to curb the power of the nobility.

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[40] There are two extant MSS of his code: *Paris. Lat.* 4418 and 4667.

[41] *Leg. Vis.*, V, 4, 22.

[42] *Leg. Vis.*, II, 1, 1.

[43] Cf. Zeumer, *N. Arch.*, XXIII, 505.

[44] "Cuncta vero, quae in canonibus vel legum edictis depravata consistunt aut ex superfluo vel indebito coniecta fore patescunt, accomodante serenitatis nostrae consensu in meridiem lucidae veritatis reducite, illis pro-

The code of Erwig with the laws of Egica and interpolations of copyists became current in manuscripts of the Middle Ages and was known as the *Forma vulgata* of the *Lex Visigothorum*.[46]

cul dubio legum sententiis reservatis quae ex tempore divae memoriae praecessoris nostri domini Chindasvinthi regis usque ad tempus domini Wambanis principis ex ratione depromptae ad sinceram iustitiam vel negotiorum sufficientiam pertinere noscuntur" (Zeumer, *Leges Visigothorum*, p. 483).

[45] That he did not is vigorously asserted by Zeumer, who would attribute only fourteen or fifteen laws to him (cf. *N. Arch.*, XXIII, 505 ff.). Ureña y Smenjaud (*op. cit.*, 506 ff.) disagrees with Zeumer and thinks that Egica made very considerable changes in the code. He places the number of Egica's extant laws at sixteen. Among them he would include, as *Leg. Vis.*, V, 1, 5, the fifth canon of Toledo XVI, omitted by Zeumer (*v. Leges Visigothorum*, pp. xxxiv-xxxv), and would attribute *Leg. Vis.*, VI, 5, 21, to Egica rather than to Wamba. Especially, he objects to Zeumer's omission of the eighteen *nomocanones* incorporated by some MSS into the first book of the code under three *tituli.* They are merely the conciliar decrees on the kingship, which will be considered in the next chapter, grouped together with such changes as were necessary to make them of general application. They were included in the edition of the *Forum iudicum* of the Royal Spanish Academy (*Editio Matritensis*, 1815) under one *titulus*, "*De electione principum.*" Even though Zeumer did not consider these *capitula* as genuine parts of the code, he should have included them among his *supplementa* out of deference to other opinions. The conciliar sources whence the *nomocanones* were drawn are the *prefatio* and canon 75 of the Fourth Council of Toledo; canons 2, 3, 4, and 8 of the Fifth; canons 14, 16, 17, and 18 of the Sixth; canon 1 of the Seventh; canon 10 of the Eighth and the *Decretum iudicii universalis in nomine principis;* canon 4 of the Thirteenth; canon 10 of the Sixteenth; canon 7 of the Seventeenth. The first *capitulum* is taken in part from Isidore's, *Etimologiae* (IX, 3). For this information and further tables cf. Ureña y Smenjaud, *op. cit.*, pp. 136-137; 519; 525-526.

[46] Cf. *Ureña, op. cit.*, pp. 536 ff. A discussion of the MSS and various editions of the *Leges Visigothorum* would be to no purpose here. Zeumer's

Gothic law did not go out of use with the Moslem Conquest in 712. The Christian refugees in various parts of the Peninsula continued to follow it, and the Mozarabic population were permitted to use it in their courts. As the reconquest progressed the *Forum iudicum* was employed more and more throughout Spain. In the thirteenth century it was translated into Spanish and became known as the *Fuero juzgo.* It was incorporated into the compilation begun in the same century by Alfonso the Wise, the celebrated *Siete partidas.*[47]

II. *Analysis of the Visigothic Code*

Divisions

The importance of the *Liber iudiciorum,* or *Forum iudicum,* which represents the final stage in the effort for unity of law, can be appreciated only by an analysis of its form and content.

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critical edition in MGH has entirely superseded its predecessors. The editions are discussed at great length by Ureña y Smenjaud (*op. cit.,* pp. 45 ff.), briefly by Zeumer (*Leges Visigothorum,* pp. xxv-xxvii). The latter offers comparative tables of the several editions (*ibid.,* pp. xxix-xxxiii), a great boon to the student, since earlier authors cite other editions. Zeumer's work gives the text of the *Liber iudiciorum,* i. e., the code from the time of Receswinth, with the changes and new enactments of the succeeding kings. Where Erwig made changes in the text of Receswinth's code the laws as promulgated by the respective sovereigns are given in parallel columns with the text according to Erwig in smaller type except where it deviates from that of Receswinth. As is evident, the edition is not a reproduction of any manuscript, since it includes laws that were abrogated by later rulers. Zeumer explains his edition, pp. xxvi-xxvii. Ureña y Smenjaud gives a fine critique of it, *op. cit.,* pp. 89-108. Besides the text of the *Liber iudiciorum* Zeumer gives the fragments of the code of Euric and the *leges restitutae* of the same; critical texts of the *Chronica regum Visigothorum;* several texts of laws found in late MSS; three texts relating to the promulgation of the *Breviarium;* the *Lex Theudis;* the *Fragmenta Gaudenziana;* the *tomi* and *edicta* of the kings to the councils; the lists of signatures of the lay nobles to the acts of the councils.

[47] Cf. Continental Legal History Series, vol. I, *A General Survey,* pp. 603 ff.; "España," *Enciclopedia universal ilustrada,* XXI, 795.

It is divided into twelve *libri;* these are divided into *tituli,* the number of the *tituli* in the several books varying from two to seven. There were fifty-three *tituli* in Receswinth's code; fifty-four in the revision of Erwig and in the *Vulgata.* If the three tituli: *De electione principum,* are authentic parts of a revision by Egica his code contained fifty-seven *tituli.*[48] *Capitula,* originally called *aerae* or *erae,* are the single units of legislation which compose the *tituli.* Usually in this study they are referred to as laws, unless that term is quite inapplicable. Receswinth's code contained 526 *capitula;* Erwig's revision, 559; the *Vulgata,* 584; and Egica's (hypothetical), 593.[49]

The statutes of Euric were already divided into *tituli* which bore captions; as many of these headings as have survived in the *Fragmenta Euriciana* are found to be retained in the *Liber iudiciorum.* The division into books with their inscriptions seems to have been introduced in the time of Receswinth.[50] The division into twelve books corresponds with the number in the Code of Justinian; the Theodosian Code had sixteen books, which number was retained in the *Breviarium Alaricianum.* The work of Justinian may have suggested this change to twelve, but the relationship of the divisions in the *Liber iudiciorum* does not extend beyond the mere number. The headings of the books are apposite except for that of the first. Probably also the rubrics over the single *capitula* were introduced under Receswinth, though Leovigild's so-called *Codex revisus* may have contained such headings. They were meant to give an indication of the contents of the *capitula* and were generally based on the text of the laws themselves. In some few instances the inscriptions belie the contents.

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[48] Cf. the tables given by Ureña y Smenjaud, *op. cit.,* pp. 147 ff.

[49] Cf. Ureña, *loc. cit.*

[50] Ureña has ingenious arguments to show that this was done by a committee appointed by the Eighth Council of Toledo, while he ascribes the arrangement of Receswinth's laws under *tituli* to Braulio (*op. cit.,* 458 ff.).

Philosophy in the Code

The first book, an introduction to the code rather than a component part of it, contains not law but political philosophy and philosophy of law. Its ridiculously inappropriate inscription, *De instrumentis legalibus,* was apparently filched from Isidore's Etimologiae.[51] The inscriptions of the two *tituli,* however, *De legislatore* and *De legibus,* are appropriate. The first tells of the duties of the lawgiver and the virtues demanded in him; the second lays down the qualities which law should possess and the ends it should accomplish.

Zeumer is impatient of what he considers the empty rhetoric of this book and scorns to discuss its *capitula.*[52] Dahn too is contemptuous of the first book: "... *aus der Spreu der Schulrhetorik und der kirchlichen Phrasen sind nur wenige Gedanken-Körnlein zu gewinnen,*" but he does not neglect the material entirely.[53] Guizot, on the other hand, is well pleased with the philosophy of the *Lex Visigothorum:*

> It is not only a code, a totality of legislative provisions, but it is also a system of philosophy, a doctrine. It is preceded by, and here and there mixed with dissertations upon the origin of society, the nature of power, civil organization, and the composition and publication of laws, and not only is it a system, but also a collection of moral exhortations, menaces, and advice. The *Forum judicum,* in a word, bears at once a legislative, philosophical, and religious character; it partakes of the nature of the law, the science, and the sermon.[54]

The first book is written in bad taste, indeed, and in execrable Latin; moreover, it is not properly a part of the code. It is quite patently an attempt to lecture the sovereigns on their duties as legislators. But what matters bad taste or bad Latin when beneath them lie, like nuggets of pure gold, fine principles of sound political philosophy? It is refreshing to find in those days, which seem to us so dark, an effort to lay down basic doctrine in regard to law, the courage to bind rulers by ethical standards and to subordinate even lawgivers to the will of God and the welfare of their people.

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[51] V, 24.

[52] Cf. *N. Arch.*, XXIII, 489; XXIV, 44.

[53] Cf. "Zur Rechtsphilosophie der Lex Visigothorum," *Westgothische Studien,* pp. 310 ff.

[54] *Histoire de la civilisation en France,* dixième leçon (in *Cours d'histoire moderne,* Brussels, 1835, I, 325-326).

Perhaps the dominant note of the philosophy in the first book is a repeated insistence that laws are for the welfare of the people and not for the peculiar advantage of individual persons.[55] Of a piece with this philosophy in the first book are some of Receswinth's introductory *capitula* in the second book. He gives laws, he says, that the people may learn to love justice as God commands. He considers himself and his successors as well as his subjects bound by the law, and he adds very explicitly that no person should presume to exempt himself because of his power or rank.[56] The latter idea is brought out somewhat less forcibly in the first book where the legislator in his capacity of judge is bidden to be no respecter of persons.[57] In the chapter on the internal administration of the kingdom we shall see the struggle that the kings waged to carry out this ideal and make the *potentiores* amenable to the laws and the courts. These passages do not express the principle of the equality of all men before the law, nor did the law code by any means attain to this ideal. But even here there are germs of democracy: all men were subject to the law, even though the law itself made some distinction of persons.

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[55] *Leg. Vis.*, I, 1, 3: "Novissime ostendendum, si non pro familiari conpendio, sed pro utilitate populi suadetur, ut appareat eum, qui legislator existit, nullo privatim commodo, sed omnium civium utilitati communi motum praesidiumque opportune legis inducere." Cf. I, 1, 2 ("salvatio populi"); I, 1, 5; I, 1, 9; I, 2, 3: "[Lex] summum salutis principum hac [ac] populorum culmen obtinet."

[56] *Leg. Vis.*, II, 1, 2: "Gratanter ergo iussa celestia amplectentes, damus modestas simul nobis et subditis leges, quibus ita et nostri culminis clementia et succedentium regum nobitas adfutura una cum regimonii nostri generali multitudine universa obedire decernitur hac parere iubetur, ut nullis factionibus a custodia legum, que inicitur subditis, sese alienam reddat cuiuslibet persona vel potentia dignitatis, quatenus subiectos ad reverentiam legis inpellat necessitas, principis voluntas." Cf. Isidore, *Sententiae*, III, 51, 1-2.

[57] *Leg. Vis.*, I, 1, 7: "Personam tantum nesciat accipere, quanto et contemnet eligere."

A mixture of charity with authority is urged upon rulers that they may enjoy the love while commanding the respect and devotion of their subjects.[58] Receswinth, comparing the relation of the king to his people with that of the head to the body, insists that first the welfare of the ruler must be secured by law, but for the reason that thus the good of the people may be attained more effectively.[59]

These *capitula* are redolent of the great respect for law, so characteristic of the Middle Ages, as something essentially higher than the mere will of the prince.[60] A definition of the qualities of a good law is taken almost verbatim from Isidore's familiar definition.[61] Even today legislation could well be measured by its standard. The reasons for the existence of laws—the curbing of the wicked and the protection of the good—are also set forth according to a passage in Isidore.[62]

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[58] *Leg. Vis.*, I, 1, 8: "Erit [artifex legum] quecumque sunt publica patrio recturus amore, quecumque privata erili dispensaturus ex potestate, ut hunc universitas patrem, parvitas habeat dominum, sicque diligatur in toto, ut timeatur in parvo, quatenus et nullus huic servire paveat, et omnes amorem eius morte conpensandum exoptent."

[59] *Leg. Vis.*, II, 1, 4: "Ordinanda ergo sunt primo negotia principum, tutanda salus, defendenda vita, sicque in statu et negotiis plebium ordinatio dirigenda, ut dum salus conpetens prospicitur regum, fida valentius teneatur salvatio populorum." Cf. introduction to II, 1, 6.

[60] Cf. *Leg. Vis.*, I, 1, 9; 1, 2, 2.

[61] *Leg. Vis.*, I, 2, 4: "Lex erit manifesta nec quemquam in captionem civium devocabit. Erit secundum naturam, secundum consuetudinem civitatis, loco temporique conveniens, iusta et equabilia prescribens, congruens, honesta et digna, utilis, necessaria, in qua previdendum est ex utilitate, que pretenditur, amplius commodi, amplius iniquitatis oriatur, ut dignosci possit, si plus veritati prospiciat publice, quam religioni videatur obesse, an et si honestatem tuetur et non cum salutis periculo arguit." Cf. *Etimologiae*, II, 10, 6 and V, 21.

[62] *Leg. Vis.*, I, 2, 5: "Fieri autem leges hec ratio cogit, ut earum metu humana coerceatur inprobitas, sitque tuta inter noxios innocentium vita,

These reasons recur several times as motives for *leges* scattered through the code.

At the conclusion of the first book is a *capitulum* which argues that good laws make for concord within the nation, for loyalty of the people toward their king, and thus for victory against foreign enemies; heavenly rewards are assured the sovereign who rules by means of good legislation.[63]

We do not know the identity of the author of this first book. Assuredly, however, he was an ecclesiastic. We shall see in a subsequent chapter that the Councils of Toledo had a similar political philosophy. We need not suppose, as Zeumer does, that the political philosopher who composed the *capitula* of the first book gave it its inappropriate heading.[64] He may not have meant that they should be included in the text of the code itself. Be that as it may, they were made the first book of Receswinth's *Liber iudiciorum* and were retained without change by Erwig and Egica.

The Contents of the Liber Iudiciorum

The code actually begins with the second book. Into it, as we have already seen, both Receswinth and Erwig introduced their decrees of promulgation. In the midst of several *capitula* connected with the promulgation Receswinth inserted four laws bearing on the kingship.[65] Then the judicial reform of Chindaswinth and Receswinth was launched, from which the book has

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atque in ipsis inprobis formidato supplicio frenetur nocendi presumptio." Cf. *Etimologiae,* II, 10, 5 and V, 20.

[63] *Leg. Vis.,* I, 2, 6: "Ex mansuetudine etenim principum aboritur dispositio legum, ex dispositione legum institutio morum, ex institutione morum concordia civium, ex concordia civium triumphus hostium. Sicque bonus princeps, interna regens et externa conquirens dum suam pacem possidet et alienam litem obrumpit, celebratur et in civibus rector et in hostibus victor, habiturus post labentia tempora requiem sempiterna, post luteum aurum celestem regnum, post diadema et purpuram gloriam et coronam: quin pocius nec deficiet esse rex, quoniam, dum regnum terre relinquid et celeste conquirit, non erit amisisse regni gloriam, sed ausisse."

[64] *N. Arch.,* XXIII, 489.

[65] *Leg. Vis.,* II, I, 4; 6-8.

its name—*De negotiis causarum.* Judges, trials, attorneys, witnesses, and legal documents are dealt with in five *tituli.* The third book (*De ordine coniugali*) devotes six *tituli* to laws on marriage and morality. The fourth book (*De origine naturali*) gives the degrees of relationship and treats of inheritance rights, wardship and guardianship, the exposing of infants, and acquisition of goods through inheritance, marriage, etc. It has five *tituli.* The fifth book (*De transactionibus*) deals principally with contracts. The seventh and last *titulus* treats of slavery and manumission. The next three books, containing seventeen *tituli,* have to do with crimes and torts. The ninth book (*De refugientibus*) devotes three *tituli* to fugitive slaves, shirkers and deserters from military service, and those who seek asylum. The tenth book (*De divisionibus et annorum temporibus adque limitibus*) has three *tituli* on the division of land and chattels, on prescription, and on boundaries. The eleventh book (*De egrotis et mortuis adque transmarinis negotiatoribus*) has three very brief *tituli* on medical ethics, the violation of graves, and foreign trade. The twelfth book (*De removendis pressuris et omnium hereticorum sectis extinctis*) has a few *capitula* protecting the people from oppression by magistrates, a few against heresy, and numerous anti-Jewish laws. There is some evidence of a systematic plan in the books up to the eighth; various odds and ends of legislation are crowded into the last four.

III. *Sources of Visigothic Law*

Elements Borrowed from Roman Law

Many sources were drawn upon by those who formulated the legislation in the *Liber iudiciorum.* Much was borrowed from Roman Law. We have seen strong Roman influence even on the codifications of Euric and Leovigild. Naturally in the codes of Leovigild and Receswinth the *Lex Romana Visigothorum* (506) was frequently copied,[66] for it was as presented in this code that Roman law was best known in Spain and best adapted to Spanish conditions. Evidence that the framers of the *Liber iudiciorum* borrowed from Justinian law seems unmistakable. In fact it would appear passing strange if they had failed to do so, since the Byzantines occupied the southeastern coast of the Peninsula from the time they were invited by Athanagild in 554 to their ultimate expulsion under Swinthila in 624. The very division of Visigothic law into twelve books, the number of the Justinian code, is significant. Besides, Visigothic laws frequently agree more or less in wording with Justinian formulas. In many instances this can be attributed to the use of a common source in earlier Roman legislation, but several Visigothic laws seem undoubtedly to have been modelled after Justinian.[67]

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[66] *V.* footnotes in Zeumer, *Leges Visigothorum, passim.* For a list of

The character of the *Liber iudiciorum* was very largely Roman. Visigothic legislators strove to exclude from the code especially such Germanic customs as were against the spirit of

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the laws taken from the *Breviarium*, *v.* von Wretschko, "De usu Breviarii Alariciani," in *Theodosiani libri XVI* (Mommsen-Meyer ed.), I, ii, cccx-cccxi.

[67] The best established case of such dependence is that of Visigothic legislation regarding episcopal jurisdiction in civil courts: *Leg. Vis.*, II, 1, 24; 30; 31, which shows great similarity to Justinian's *Novel* LXXXVI. This legislation will be discussed at some length in Chapter V. Zeumer remarks that the similarity is more evident in certain passages when the text of the *Novel* according to the *Epitome Juliani* is referred to rather than the *Authenticum*. Cf. *N. Arch.*, XXIV, 84 ff.; cf. Haenel, *Juliani epitome Latina novellarum Justiniani*, p. 93 (*Nov.* LXIX = *Auth.* LXXXVI). *Leg. Vis.*, II, 5, 17 (a law of Receswinth concerning the comparison of documents for the purpose of determining the authenticity of disputed wills), seems to have depended on *Novel*, LXXIII, *c.* 7 of Justinian (Juliani LXVI, Haenel, p. 89); cf. Zeumer, "Zum westgothischen Urkundenwesen," *N. Arch.*, XXIV, 35. *Leg. Vis.*, III, 2, 7 (a law of Chindaswinth punishing masters for lying in regard to the servile state of slaves to secure their marriage with freeborn women), seems to show the influence of *Novel* XXII, *c.* 11 of Justinian (Juliani XXXVI, *c.* 3. Haenel, p. 58); cf. Zeumer, *N. Arch.*, XXIV, 596. *Leg. Vis.*, III, 6, 2 (Chindaswinth's law on divorce), shows dependence on *Novel* CXVII, *c.* 8; *c.* 9; *c.* 10 of Justinian (Juliani CVIII, *c.* 7; *c.* 8; *c.* 9; cf. Haenel, pp. 131-132); cf. Zeumer, *ibidem*, p. 627. *Leg. Vis.*, II, 5, 11, appears to depend on *C. Just.*, VI, 22, 9; cf. Zeumer, *ibidem*,

Christianity and the supremacy of the State.[68] Thus the blood-feud, which involved the whole *sippe* and ignored the State, found no recognition in the code. Self-help was discouraged. Outlawry was not a recognized institution. A *Lex antiqua* expressly declared that responsibility for crime was to rest on the guilty party alone, not upon relatives or heirs; a crime was to die with its perpetrator.[69] The State undertook to render justice through its courts, and judicial proceedings were Roman. Proof was secured primarily by rational, material means. Documentary evidence and witnesses were freely employed, but not *compurgatores.* A *Lex antiqua* ordered that the judge should first interrogate the witnesses and then examine the documents. He was to have recourse to the oaths of the parties only when rational proof failed. Erwig in an addition to this law left it to the judge to decide which party should make oath.[70] Witnesses testified under oath.[71]

However, the use of judicial torture as a means of eliciting evidence was provided for to a very unusual degree. This was not an institution of the primitive Germans, who employed the ordeal in its stead. Torture was doubtless taken over from Roman law, which permitted it in the case of slaves and for persons of every class when evidence was sought on a charge of

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p. 116. It is possible that Justinian law was used as a model for some of the laws in Leovigild's revision: cf. *Leg. Vis.*, II, 4, 2 (*Antiqua*, requiring witnesses to testify under oath) and *C. Just.*, IV, 20, 16 *pr.;* cf. Zeumer, *ibidem*, p. 100. Cf. *Leg. Vis.*, IV, 5, 5 (*Antiqua lex de peculio castrensi et quasi castrensi filii familias*), and *C. Just.*, VI, 61, 6; cf. Zeumer, *N. Arch.*, XXVI, 147-148. Zeumer does not think there is dependence in this last instance.

[68] Cf. Eduardo de Hinojosa, "Das germanische Element im spanischen Rechte" (tr. from the French by R. Köstler), *Zeitschrift der Savigny Stiftung für Rechtsgeschichte* (*Germanistische Abteilung*), XXXI (1910), 285. Cf. Dahn, *Westgothische Studien*, pp. 259 ff.

[69] *Leg. Vis.*, VI, 1, 8.

[70] *Leg. Vis.*, II, 1, 23; cf. II, 2, 5 (Chindaswinth). *V.* Zeumer, *N. Arch.*, XXIV, 78.

[71] *Leg. Vis.*, II, 4, 2 (*Antiqua*).

treason.[72] The Burgundians, Franks, and Bavarians employed it upon slaves, but only the Visigoths resorted to it in the trials of the freeborn as well.[73] Judicial torture for slaves was provided for by the *Leges antiquae* [74]; only in the time of Chindaswinth does a law appear which applied it to freemen.[75] The use of torture on freeborn persons was limited to charges of treason, homicide, adultery, and those involving sums of not less than three hundred *solidi.* It was resorted to at the peril of the accuser. In the redaction of this law by Erwig the nobles were made less subject to torture than the ordinary freemen, and, even as regards the latter, torture was prohibited except in cases involving a sum of five hundred *solidi* or more. After Erwig's revision the decree of the Thirteenth Council of Toledo guaranteeing to palatine officials and the clergy the right of trial in the presence of their equals forbade the use of torture as a means of establishing guilt; it made the same benign provision for other free-born persons when a charge of treason was raised against them. The decrees of this council were ratified by Erwig and added to the code.[76]

A notable instance of Roman influence was the provision in Visigothic legislation for the punishment of homicide according to the measure of culpability. Germanic law, without regard for anything except the damage, required composition even for unintentional killing. Visigothic law, seeking the basis for the morality of such actions in the will of the perpetrator, distinguished various degrees of homicide, if it did not specify them nominally. Receswinth appealed to Sacred Scripture in ruling that homicide caused in a purely fortuitous manner was not punishable.[77] This law was a generalization of an earlier one by Euric which in rather vaguely specified instances exonerated from blame for accidental killing.[78] Several *capitula* were devoted to various cases of manslaughter, which was carefully distinguished from wilful murder and punished less severely. It is interesting that most of these admirable laws were contributed by Receswinth, whose legislation has been so much derided.[79]

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[72] Cf. Pauli *Sent.*, V, 29, 1-2: *Ad legem Iuliam maiestatis* (*Lex Romana Visigothorum, V*, 31). *V.* Floyd S. Lear, "Crimen laesae maiestatis in the Lex Romana Visigothorum," *Speculum*, IV, 77-79.

[73] Cf. Schröder-Künssberg, *Lehrbuch der deutschen Rechtsgeschichte*^{6}, pp. 399-400; Brunner-Schwerin, *Deutsche Rechtsgeschichte*, II^2, 542. In the sixth century Frankish rulers arbitrarily employed it on occasion against freemen (cf. Dalton, *The History of the Franks by Gregory of Tours*, I, 215-217). Cf. Dahn, *Westgothische Studien*, pp. 282-285.

[74] Cf. notes to *Leg. Vis.*, VI, 1, 5, in Zeumer's edition.

[75] *Leg. Vis.*, VI, 1, 2. The introduction to this law indicates that the legislator intended to curb malicious accusations: "*Si in criminalibus causis discretionis modus amittitur, criminatorum malitia nequaquam frenatur.*" This important fact does not seem to be noted by commentators on the law. It would appear that Chindaswinth was regulating the use of torture for freemen rather than introducing it for the first time.

[76] Canon 2; *Leg. Vis.*, XII, 1, 3.

Remnants of Germanic Law

Throughout all Visigothic law there was no trace of the use of the Germanic ordeal as a means of proof until, strange to relate, it crops out in what appears to be the last law added to the code.[80] It is the ordeal by hot water to be applied by a judge in settling accusations involving small amounts of money when torture was not permitted by law. To explain this reactionary legislation earlier authors held that it was brought over from the Frankish Kingdom.[81] The accepted theory now is that of Ficker, who holds the thesis that old Germanic customs had survived in the traditions of the Gothic folk despite the Romanization of the code and had come to the surface in this law. Later in Mediaeval Spain the *Fueros* revert to other Germanic institutions: compurgation, outlawry, self-help, the feud, various ordeals.[82]

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[77] *Leg. Vis.*, VI, 5, 1; Deuteronomy, xix, 4-6.

[78] *Leg. Vis.*, VI, 5, 2.

[79] *Leg. Vis.*, VI, 5, 1; 3-5; 7-9. Cf. Zeumer, *Leges Visigothorum*, pp. 270-271, notes with bibliography; cf. Guizot, *Histoire générale de la civilisation en Europe*, sixième leçon (ed. Brussels, 1840, p. 117).

[80] *Leg. Vis.*, VI, 1, 3 (Egica or Witiza). Cf. text from a later MS regarding the applying of this ordeal in Zeumer, *Leg. Vis.*, p. 463. On the ordeal cf. Brunner-Schwerin, *op. cit.*, II^2, 538-560.

[81] Cf. Dahn, *Westgothische Studien*, pp. 285-286. For other authors, cf. Hinojosa, *op. cit.*, p. 283.

There are other elements of Germanic law in the code. Even the later Catholic sovereigns introduced legislation which was Teutonic in spirit. Such was the dowry law retained and amplified by Chindaswinth.[83] Presumably the *Antiquae* giving the disposition of a girl's hand to the father, widowed mother, brothers, or paternal uncle, and designed principally to secure to the girl an adequate dowry, were from German rather than Roman sources.[84] The equitable and well developed legislation on inheritance presented a blending of Roman and Germanic ideas.[85] The same may be said concerning the careful regulations which defined the duties of guardians and protected the rights of minors.[86] Quite German were the provisions made for *wergeld* and *composition.* A *Lex antiqua* gives a scale of *wergeld* to be paid by the owner of an animal which should cause the death of a person.[87] The price to be paid varied according to sex, age, and condition (free or slave). Erwig removed all variation of *wergeld* for age and sex, though this seems to have been restored later.[88] Chindaswinth arranged a scale of composition for varying degrees of bodily injury wrought by one person against another.[89] In none of these laws is any distinction made between Goth and Roman, whereas the Franks and Lombards placed a lower estimate on the Roman population. The legislation of the later Gothic kings put composition to some extent on a basis of personality: as far as the freeborn were concerned all were considered of equal value; the economic and military aspects of age and sex were no longer criteria. However, the distinction between the freeborn, freedmen, and slaves was still retained.

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[82] Ficker, *Ueber nähere Verwandschaft zwischen gothisch-spanischem und norwegisch-islandischem Recht*, pp. 455 ff., and *passim;* Brunner, *op. cit.*, I^2, 494; Zeumer, *N. Arch.*, XXIII, 511; Hinojosa, *op. cit.*, *passim.*

[83] *Leg. Vis.*, III, 1, 5; cf. Zeumer, *N. Arch.*, XXIV, 584 ff.; Schröder-Künssberg, *op. cit.*, pp. 328 ff.

[84] *Leg. Vis.*, III, 1, 2; 6; 7; 8; cf. Zeumer, *op. cit.*, pp. 576 ff.

[85] *Leg. Vis.*, III, 2, 1-20; cf. *N. Arch.*, XXVI, 95 ff.

[86] *Leg. Vis.*, IV, 3, 1-4; cf. *op. cit.*, pp. 134-137.

[87] *Leg. Vis.*, VIII, 4, 16.

[88] Zeumer, *Leges Visigothorum*, p. 336, note 2.

[89] Cf. *Leg. Vis.*, VI, 4, 1 and 3.

The most common form of punishment, prescribed by Visigothic laws of every period, was by the lash. Dahn maintains that this is not of Germanic origin and sees in it a consequence of despotism in the kingdom and the harshness of ecclesiastical discipline.[90] Inasmuch as this method of punishment appeared in the earliest Visigothic law when Catholicism was at most tolerated, his theory is quite without foundation as regards the Church. Much more reasonable is Zeumer's view that it must be an old Gothic survival.[91] Slaves and the lower classes were most subject to this penalty, but the higher classes were by no means immune. Its use was prescribed immoderately and to the point of the ridiculous. Egica threatened all the inhabitants of any town with two hundred lashes if they failed to co-operate in seeking out fugitive slaves.[92] Perhaps the penalty of the lash was a concession to the barbarism of the Goths, a compensation, as it were, for the revengeful methods of retribution which the code denied them. The talion laws may have been of this nature also. Chindaswinth ordained that for certain injuries to the person of another the offender was to be given the same treatment in retaliation. This penalty was forbidden in return for a blow of the fist, a kick, or for any blow on the head, lest a greater injury might result; composition was provided for instead.[93] For false accusation several laws required that the plaintiff be given the penalty which the accused would have incurred had he been found guilty.[94] Quite commonly for crimes of unchastity offenders were given into the power of an outraged husband, or wife, or parent. The same method of retribution was in some instances employed for crimes of slaves against freemen.[95]

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[90] *Westgothische Studien*, p. 186.

[91] *N. Arch.*, XXIII, 491.

[92] *Leg. Vis.*, IX, 1, 21.

[93] *Leg. Vis.*, VI, 4, 3.

[94] *Leg. Vis.*, VII, 1, 1 and 5 (*Antiquae*); VI, 1, 6 (Chindaswinth).

The Civil Code and the Church Councils

More directly connected with the subject of this study is the relation between the Spanish councils and civil law. At this point it becomes necessary to attempt to determine the relationship between the canons of the councils and the laws of the civil code. The confusion of legislation in the ecclesiastical and civil codes dated from the time of the conversion of the Visigoths to Catholicism, when the separation between the secular and spiritual spheres ceased to be strictly observed. At the invitation of the kings the councils framed considerable legislation dealing with secular matters. This conciliar legislation was almost as truly royal law as the *capitula* of the civil code. Moreover, both the civil and the ecclesiastical codes were intended for the same people. Nevertheless, there was a distinction between the two bodies of law.

The very name given to the civil code, *Liber iudiciorum,* indicates what it was supposed to be—a practical collection for the use of judicial officers in the application of the law. As for a classification of its contents it contained private law and some phases of public law, namely, criminal law and procedure, and administrative law; naturally it had much to do with trials. The councils, aside from their purely ecclesiastical legislation, formulated the constitutional law of the kingdom. Much of their legislation centered about the kingship. They crystallized Gothic custom in regard to it, interpreted it, sublimated it, investing it with a political philosophy. Thus far the spheres of the two codes, even as regards civil matters, were entirely separate. However, the councils also framed considerable secular legislation which paralleled that of the *Liber iudiciorum.* The question is whether such canons immediately became civil law binding upon secular judges. The indications are that they did not unless, as frequently happened, they were taken into the civil code by the rulers. In fact when Receswinth promulgated the *Liber iudiciorum,* technically so called (654), he excluded all other law from the courts, hence also conciliar law.

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[95] A very common penalty was "*decalvatio.*" Just what this means is not clear. Dahn says it was the tearing out of the hair with the scalp. (*Ausreissen des Haares sammt der Schädelhaut;* cf. *Westgothische Studien,* pp. 191-192). The dictionaries give only the meaning, "to make bald." The mere shaving of the head seems like a slight penalty; yet it may have meant great disgrace to the long-haired Goths. The penalty was connected with some other punishment and at least in some cases rendered the person infamous. The laws speak also of *turpiter* or *deformiter decalvare* without any explanation. Dahn's conception of the penalty seems too terrible. *Leg. Vis.,* VI, 2, 4, orders that the *decalvati* for certain offences be compelled to go about through "*decem convicinas possessiones*" as a warning to others. This would look as if the physical disgrace was only temporary. *Leg. Vis.,* VI, 4, 3, appears to consider *decalvatio,* committed as an offence, as less than mayhem (*v.* Zeumer, *Leges Visigothorum,* p. 265).

The sovereigns looked to the councils for guidance in their legislation. Thus we have seen that Receswinth, Erwig, and Egica called upon councils to assist them in revising the code. Erwig went further and approved of the canons of the Twelfth (681) and Thirteenth (683) Councils by special edict, and made them law of the land.[96] He also suggested matters of a civil nature to the Thirteenth Council for legislation. Egica sanctioned the decrees of the Fifteenth Council (688),[97] but there is no record to show that he did the same for the other councils held in his reign. If Egica actually issued a revision of the civil code, including in the first book the conciliar law on the kingship (a possibility which Zeumer somewhat arbitrarily omits),[98] the restriction which kept constitutional law out of the civil code was abandoned and the collection was no longer merely a *Liber iudiciorum.*

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[96] For the edict approving of the Twelfth, *v.* Zeumer, *Leges Visigothorum,* pp. 476-477; the approval of the Thirteenth was incorporated into the code: *Leg. Vis.,* XII, 1, 3. Previously only Recared had issued a special edict of approval.

[97] Mansi, XII, 22.

[98] Cf. *supra,* p. 67, note 45.

IV. *An Appreciation of the Visigothic Code*

There have been few attempts to give summary appreciations of the Visigothic Code. In fact, it is so complex that it defies brief description. Montesquieu's rather well-known remark is quite unjust and quite misleading:

> But the laws of the Visigoths, those for instance of Recessuinthus, Chaindasuinthus, and Egigas, are puerile, ridiculous and foolish; they attain not their end; they are stufft with rhetoric and void of sense; frivolous in substance, and bombastic in style.[99]

It is true that the later legislation of the Visigoths is deplorably lacking in the direct and rugged simplicity which otherwise characterized the *Leges barbarorum,* including the Visigothic *Leges antiquae;* neither did it approach the elegance even of decadent Roman law. Some of the *capitula,* especially of Receswinth, as far as external form is concerned, are deserving of Montesquieu's indictment. But beneath nearly all these laws lie sterling legal principles. Zeumer finds some extenuation for Montesquieu's failure to estimate these laws properly in the fact that he had access only to texts which contained numerous idle and contradictory interpolations.[100] Gibbon, speaking of the Visigothic Code, says:

> It has been treated by the President de Montesquieu . . . . with excessive severity. I dislike the style; I detest the superstition; but I shall presume to think that the civil jurisprudence displays a more civilized and enlightened state of society than that of the Burgundians or even of the Lombards.[101]

Even the superstition which Gibbon singles out for his express detestation is not remarkably conspicuous in the code.

Savigny writes:

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[99] Montesquieu, *The Spirit of Laws,* tr. by Nugent, II, 199, book XXVIII, ch. i.

[100] *N. Arch.,* XXIII, 490-491.

[101] *The History of the Decline and Fall of the Roman Empire,* ch. xxxviii, note 132 (Bury ed. [1909], IV, 155).

> Der Charakter dieses Gesetzbuchs ist von dem der übrigen germanischen Rechtsbücher wesentlich verschieden. Hier allein ist Anspruch auf Bildung, Beredsamkeit, selbst auf Philosophie sichtbar, zugleich auch auf die ausschliessende Beherrschung des praktischen Rechts indem jede Rechtssache lediglich aus dem Gesetzbuch, und wo dieses schweigt vom König entschieden werden soll, welcher dann zugleich das Gesetzbuch durch diesen Fall ergänzen will. Unverkennbar ist die Teilnahme römischer Geistlichen an der Abfassung des Werkes, und die Nachamung des Theodosischen Codex, die jedoch gänzlich misslungen ist; überall findet man einen Ueberfluss an Worten bei gänzlicher Unfähigkeit irgend einen Gedanken bestimmt zu bezeichnen.[102]

The great Roman law authority of the last century does not exaggerate when he distinguishes the Visigothic Code from the other *Leges barbarorum* because of its culture, eloquence, and philosophy. He notes its peculiar position inasmuch as it alone could be employed in the courts of the kingdom to the exclusion of all other law, cases not comprehended in it being referred to the king. The participation of the Catholic clergy in the framing of it is indeed undeniable. He errs in considering it an unsuccessful imitation of the Theodosian Code, but he is quite correct in his stylistic censures. His criticism, though brief, is rather satisfactory. It is disconcerting to find him giving in a note Montesquieu's devastating aspersions with the remark that they are very apposite.[103] However, he also adds Gibbon's appreciation, which is not unlike his own.

Guizot, though not thoroughly conversant with the evolution of the Visigothic Code, seems to have caught its spirit and to be full of admiration for it; in his lectures he refers to it several times with enthusiasm:

> Open the laws of the Visigoths, and you will discover that it is not a code compiled by barbarians, but bears convincing marks of having been drawn up by the philosophers of the age—by the clergy. It abounds in general views, in theories, and in theories, indeed, altogether foreign to barbarian manners. Thus, for example, we know that the

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[102] Savigny, *Geschichte des römischen Rechts im Mittelalter*, II, 72-73.

[103] "*Sehr treffend sagt Montesquieu . . .*" (*loc. cit.*).

> legislation of the barbarians was a personal legislation: that is to say, the same law only applied to one particular race of men. The Romans were judged by the old Roman laws, the Franks were judged by the Salian or Ripuarian Code:[104] in short, each people had its separate laws, though united under the same government, and dwelling together in the same territory. This is what is called personal legislation in contradistinction to real legislation, which is founded upon territory. Now this is exactly the case with the legislation of the Visigoths; it is not personal, but territorial. All the inhabitants of Spain, Romans and Visigoths, were subject to the same law. Continue your reading, and you will meet still more evident traces of philosophy. Among the barbarians men had, according to their situation, a determinate value; the barbarian, the Roman, the freeman, the vassal, etc., were not held at the same price; there was a tariff on their lives. The principle of the equal value of men before the law was established in the law of the Visigoths. Look at their system of procedure; in place of the oath of *compurgatores* or trial by battle you will find proof by witnesses, a rational examination of the fact such as might be made in a civilized society. In short, the whole Visigothic law bears a wise, systematic, social character. We perceive here the work of the same clergy who were predominant in the Councils of Toledo, and so powerfully influenced the government of the country.[105]

In his later series of lectures on the civilization of France the same savant says:

> . . . the law of the Visigoths is the work of the clergy; it emanates from the councils of Toledo. . . . The Visigothic Code is evidently the work of the ecclesiastics; it has the vices and merits of their spirit; it is incomparably more rational, just, mild, and exact; it understands much better the rights of humanity, the duties of government, the interests of society; it strives to attain a higher and more complex aim than any other of the barbarian legislations. But at the same time, from the political viewpoint, it leaves society more deprived of guar-

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[104] The translator has improved upon the original: "*La loi romaine gouvernait les Romains, la loi franque gouvernait les Francs; . . .*"

[105] Guizot, *Histoire générale de la civilisation en Europe*, troisième leçon (ed. Brussels, 1840, pp. 66-67). The translation by William Hazlitt (*The History of Civilization*, D. Appleton and Co., New York, 1885, I, 77-78) is used with several changes to secure a more faithful reproduction of the original.

> antees; it surrenders it on the one side to the clergy, on the other to the royalty. The Frank, Saxon, Lombard, and even Burgundian laws respect the guarantees arising from ancient customs, of individual independence, of the rights of each proprietor in his domains, of the participation, more or less regular, more or less extensive, of freemen in the affairs of the nation, in judgments, and in the conduct of the acts of civil life. In the *Forum judicum,* almost all these remains of primitive German society have disappeared; a vast administration, semi-ecclesiastical, semi-imperial, extends over society.[106]

Guizot is inexact if he means, as he appears to, that the law code emanated directly from the Councils of Toledo. With the exception of a few laws, we have seen, of course, that this was not the case. But it is true that much of the spirit of the laws sprang from the close union of Church and State, which was consolidated in the councils. It must be remembered that the territorial instead of the personal jurisdiction of the law code was achieved only gradually among the Visigoths. The Hispano-Romans lived under their *Lex Romana* for nearly a century and a half, while the Goths had their distinct code, although it was deeply tinctured with Roman law. The two races gradually drew nearer together. Unity of religion hastened national unity. Plenary councils helped to weld the nation together. Sovereigns began to embrace all their subjects in the jurisdiction of single laws, and finally as to an arch that had been long building Receswinth added the keystone of legal unity by making his *Liber iudiciorum* sole law of the land. The same tendency was discernible in the omission of any distinction in *wergeld* for members of the two races. With this, in connection with composition for bodily injuries, came a gradual elimination of all difference based on rank, age, and sex; only the distinction between the freeborn and the slave was retained.

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[106] Guizot, *Histoire de la civilisation en France,* dixième leçon (in *Cours d'histoire moderne,* ed. Brussels, 1835, I, 326-327). The translation *supra cit.,* is used, again with alterations, II (*History of Civilization in France*), pp. 218-219.

Even-handed justice to all according to the law was the ever-repeated postulate of the code. There was recognition of personality even in the slave, as we shall see in a subsequent chapter. Roman court procedure took the place of barbarian lawlessness and of Germanic compurgation and ordeals, with the exception of the trial by hot water, which cropped out in the latest Visigothic legislation. Guizot fails to paint in the shadows in legal procedure and sanction—judicial torture, a barbaric use of the lash, talion, enslavement, even exoculation.

The *Leges Visigothorum* were not, like the Salic and Lombard Codes, almost purely Germanic; but neither were they simply a compilation of Roman laws like the *Edictum Theodorici.* The Salic Code was all but entirely penal with a modicum of civil law; the later *Lex Ribuaria,* showing an advance in civilization, included more civil dispositions, but Visigothic law possessed a well developed body of civil as well as penal legislation. Besides, it contained administrative law and some political regulations in as far as political offences might bring persons into court. In conciliar enactments, which finally may have been attached to the *Liber iudiciorum,* the Visigoths had a valuable inheritance of constitutional law. The Visigothic legislators were not merely recorders of customs like the shadowy compilers of the *Lex Salica* or the kings who gathered the Anglo-Saxon dooms; they consciously introduced new legislation, not in defiance and contempt of the old *mores,* but gradually and with discretion. In their arrangement in the code the *Leges Visigothorum* exhibit greater effort at classification than do the laws of other Germanic tribes. Even the statutes of Euric were presented under *tituli* and the laws of the *Liber iudiciorum* were classified with an elaboration which imitated, not without considerable success, the great Roman codes.

The Visigothic Code reflects most truly the nation's civilization: a Germanic tribe conquering a Roman population, the victors bowing before the civilization of the vanquished, the two races bound together in the bonds of one faith; Church and

State closely united, with the Church holding aloft the torch of Christian Roman culture, but with the kings choosing the way. Out of this clashing and blending of civilizations came the *Leges Visigothorum*—not a Germanic code, but Roman, with considerable vestige of German custom. Some of the Roman law was already touched by Christianity. To this was added the leaven of other Christian principles, so that the laws took on a distinctly Christian tone. Nevertheless, more than a little of the pagan and barbaric remained. Perhaps the clergy achieved less than they might have. It cannot, however, be presumed that they were given free hand to revise the code as they would. Moreover, laws change slowly even under such a potent influence as that of Christianity. It is to the undying credit of the clergy that they were able to bring to the formulation of the *Leges Visigothorum* such a high degree of culture, such broad philosophy, such intelligent understanding of the needs of the people, such a spirit of Christian humaneness, and such a rich heritage of Roman legal knowledge, and thus establish a solid basis for a harmonious union between Church and State. It is no less a glory to Visigothic civilization that this code moulded on Christian principles to suit a Germano-Roman people incomparably surpassed in excellence the codifications of the other barbarian peoples.

CHAPTER IV

The Church and the Catholic Kings

I. *The Reigns in Chronological Sequence*

The conversion of the Visigoths to Catholicism brought about no constitutional changes in the government of the kingdom. The power of the monarch was neither diminished nor increased constitutionally. The close union with the Church, however, brought stability to the government; and the kings quick to realize this cultivated cordial relations with the bishops, finding in them and the councils the strongest support for their authority. The internal affairs of Visigothic Spain from Recared to the time of the Moorish Conquest are very largely a record of the manner in which the rulers and the ecclesiastics co-operated to secure peace and order in the kingdom. The forces of disorder were always present, and hence, to understand the political activities of the Church, it will be necessary to discuss each reign separately and somewhat in detail.

Recared and His Successors to 612

Throughout the reign of Recared, the first of the Catholic kings, the relations between Church and State were close and amicable. It was a flourishing period for the Church and for religion. A number of provincial councils were held, and monasticism took on a fuller development.

At Recared's death (601) the old Gothic tradition of election was disregarded and his young son Liuwa placed on the throne. The principles of heredity and legitimacy, however, were not sufficiently recognized to secure allegiance for any ruler unless he had sufficient character to compel it. A revolution in 603 brought Witteric to the throne, and Liuwa was murdered. After the conversion of the Goths a Count Witteric had participated in an unsuccessful revolt of the Arians against Recared.

Whether King Witteric is to be identified with this count is not certain, and there is no contemporary evidence to show that the Witteric who assumed the crown made an effort to revive Arianism. Assertions to this effect come centuries later. Isidore of Seville speaks with severity of his cruelty and records his violent death (610).[1]

Gundemar (610-612), successor to Witteric, felt quite free to interfere in ecclesiastical matters. The only record remaining of the Toledo Council held in 610 confirmed the position of that city as metropolitan see of the whole province of Carthaginiensis and threatened with penalties those who should dispute this. It was signed by fifteen bishops of the province. The matter lay very close to the heart of the king and he immediately emphasized the bishops' decree by an edict threatening royal as well as ecclesiastical punishment to anyone gainsaying Toledo's right to be the sole metropolitan see of Carthaginiensis. In forceful terms he denied the assumption of the bishops that any division of the province had taken place and that Toledo was merely the chief see of the region of Carpetania, while Carthagena, the old metropolitan see, remained the head of the rest of the province. This was a decided step toward making Toledo, which was the capital of the kingdom, the leading ecclesiastical see as well, and thus binding Church and State together more closely. The theory back of this was certainly not the ascendancy of the Church over the government; nevertheless, the edict was signed by twenty-six bishops, all but one from other provinces, including the metropolitans of the kingdom. Isidore of Seville and Innocent of Merida stated in signing that they had come "*pro occursu regio,*" apparently insisting on the royal rather than the ecclesiastical nature of the gathering. The bishops must have realized full well that they were preparing the way for a primacy in the Spanish Church.[2]

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[1] *Historia Gothorum,* 58. Liuwa II and Witteric were the only kings murdered in the Catholic period.

The Reign of Sisebut

Sisebut was elected to the throne in 612. An able ruler, he inaugurated a strong military policy against the Byzantines in the Peninsula. The great blemish on a reign otherwise benign was his intolerance toward the Jews, which will be considered later. This cruelty in him is the more inexplicable if what the chronicle of pseudo-Fredegarius says is true, that Sisebut lamented the bloody wars of his reign, crying out: *"Eu me misero, cuius tempore tante sanguis humanae effusio fietur,"* and sought to save the lives of the enemy: *"Cuiuscumque potebat occurrere de morte liberabat."*[3] That war was repugnant to him appears from the fact that one of the king's own letters insists on a ruler's accountability to God for waging war.[4] Christianity, it would appear, had softened his

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[2] For a somewhat more detailed discussion of this whole matter *v.* Dom Paul Séjourné, *Saint Isidore de Séville,* pp. 86 ff. The serene complacence with which Gundemar views his *duties* toward religion quite equals that which, as we saw previously, Recared exhibited:

Licet regni nostri cura in disponendis atque gubernandis humani generis rebus promptissima esse videatur, tunc tamen majestas nostra maxime gloriosiori decoratur fama virtutum, cum ea quae ad divinitatis et religionis ordinem pertinent, aequitate rectissimi tramitis disponuntur; scientes ob hoc pietatem nostram non solum diuturnum temporalis imperii consequi titulum, sed etiam aeternorum adipisci gloriam meritorum ("Decretum piissimi atque gloriosissimi principis nostri Gundemari Regis," in J. D. Mansi, *S. conciliorum nova et amplissima collectio,* X, 510).

[3] *Chronicarum quae dicuntur Fredegarii libri,* IV, 33. The chronicle is a compilation of Frankish history; the portion containing this information was written by a contemporary chronicler. *V.* Carlton H. Hayes, *An Introduction to Sources Relating to the Germanic Invasions,* pp. 192 ff.

[4] ". . . quod si bella surgant, si mucro fervidus in qualibet parte desaeviat, si vita hominum tempus bellicosum non exigat, quam opinaris pro tantis sceleribus, pro ingestis cladibus, pro funestissimis inlatis vulneribus Deo reddere rationem. Mihi videtur, et sane rectum videtur, illum de tot malis tenere obnoxium, qui accipere noluit piissime oblatum remedium" (*Epistola Sisebuti ad Caesarium,* Migne, *P. L.,* LXXX, 367).

Gothic heart. He had cultivated a taste for letters and has left some writings. These reveal him as a religious devotee, perhaps a bit too much interested in religion for the good of the Church, despite the fact that Isidore commended him highly.[5] Several provincial councils were held while he reigned.

King Swinthila and the Usurpation of Sisenand

Sisebut died in 621 and was followed by his son Recared II, still a child, who lived only a few months after he became king. Swinthila was raised to the throne in the same year. His reign is remarkable for the fact that he succeeded in dislodging the Byzantines from the Peninsula and with the exception of a few districts in the north ruled over all Spain. He was the first Gothic king to do so.

In 631 Swinthila lost his throne through a revolution headed by the usurper, Sisenand. An almost total lack of detail regarding the revolution baffles historians. Why was Swinthila dethroned? Isidore of Seville was fulsome in his praise of that sovereign's good qualities.[6] He does state that Swinthila associated his son Ricimir with him in the rule, but, though this violation of the principle of election was against Visigothic custom, it alone could scarcely have aroused such ruinous opposition to a powerful and otherwise blameless monarch. The chronicle of pseudo-Fredegarius perhaps gives us the clue to his unpopularity: " . . . *cum essit Sintela nimium in suis inicus et cum omnibus regni suae primatibus odium incurrerit.* . . ."[7]

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[5] *V.* especially his letter ordering Caecilius to reassume the see of Mentesa, which he had resigned to become a monk; and one to Theudila, his son, who had abandoned the world for the religious life; *v.* also his letter to the Lombard king and queen on the subject of Arianism. The letters of Sisebut and his life of St. Desiderius are to be found in Migne, *P. L.*, LXXX, 363-384; a critical edition of the letters in "Epistolae Wisigoticae" (ed. W. Gundlach), MGH, *Epistolarum* tomus III, pp. 662-675. For Isidore's encomium of Sisebut *v. Historia Gothorum,* 60-61.

[6] *Historia Gothorum,* 65.

[7] *Chronicarum quae dicuntur Fredegarii libri,* IV, 73.

The Political Theory of the Fourth Council of Toledo

Though the revolt of Sisenand had succeeded and he had been elected king, his position was manifestly insecure: revolt, which had raised him to the throne, could as quickly cast him down. Quite naturally he turned to the one power within the kingdom which could prop his tottering throne—the Church. Sisenand knew that there was salvation for him in the support of the bishops. Accordingly he called them to Toledo in 633 for what is known as the Fourth National Council. Sixty-two bishops of Spain and Septimania answered his summons and the now venerable Isidore, metropolitan of Seville, presided. The king arrived surrounded by satellites from the ranks of the nobility. In a well directed plea filled with humility and benevolence he prostrated himself before the assembled prelates and in tears implored their prayers, urging them to maintain the rights of the Church in accordance with ancient usages and to correct abuses. Nor did he throw himself upon the mercy of the bishops in vain.

The last canon of the council,[8] one of the longest and most detailed pieces of legislation in all the Spanish councils, was devoted to a confirmation of Sisenand's right to be king and to the stabilizing of the throne: "*Postrema nobis cunctis sacerdotibus sententia est, pro robore nostrorum regum, et stabilitate gentis Gothorum, pontificale ultimum sub Deo iudice ferre decretum.*"

Tiresome and verbose as the canon is, nevertheless it contains an essential expression of the sound political theories of the Spanish Church. The Fathers were grievously distressed at the spirit of sedition which threatened ruin to the kingdom and set about to improve the morale of their countrymen. They actually preached patriotism,[9] but not upon a basis of the

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[8] Canon 75; *v.* Mansi, X, 637 ff.

[9] A step toward solidarity had been taken when the council decreed in canon 2 that uniformity of liturgical practice was to be observed in the kingdom, the decree being prompted by a feeling of national consciousness: "*quia in una fide continemur et regno.*"

Divine Right of Kings. The foundation of loyalty they found in the oath of fidelity which the subjects were required to take. The curse of God would come upon a people breaking their oath to the king. How could they keep pledges, truces, treaties with enemies from without when they broke faith with their own rulers? Disloyalty was suicidal madness. They harked back to the Old Testament for the sanctity of kings: "*Nolite tangere Christos meos,*"[10] and "*Quis extendet manum suam in Christum Domini et innocens erit?*"[11] Pacts were made with enemies in war and kept; how much more binding should they not be at home! The violation of the oath of loyalty was sacrilegious not merely because it broke a pact with the king, but because it offended God, in whose name the promise was made. Other nations were destroyed by the wrath of God; let the Goths escape a like fate by worshipping Him in fear and keeping plighted faith toward their rulers. Stirring up insurrection, plotting the overthrow of the king, usurping the throne, were vehemently condemned.

Because the period of an interregnum was especially dangerous to the State, the council laid down the method of electing kings, a matter hitherto left to custom and subject to innumerable abuses. The bishops anticipated that their legislation must at last gain for the sovereigns the quiet possession of the throne until death and so they decreed: ". . . *defuncto in pace principe, primates totius gentis cum sacerdotibus successorem regni concilio communi constituant.* . . ." The nobility and the bishops were to elect the king.[12]

For fear the earnest sermon against sedition should fail of its purpose the council added sanction to admonition. Stressing again the holiness of the oath, the bishops threatened anathema against all who should join in revolt together with a penalty of excommunication from the Church and ostracism from association with Christians: offenders were to be *excommunicati vitandi.* To emphasize the solemnity the long anathema was repeated three several times in the name of the Three Divine Persons. But the king was in nowise unduly glorified; he was not recognized as enjoying indefeasible right; he was not considered *legibus solutus;* he was admonished to rule for the good of the kingdom; and he was not to bring it to ruin by disregarding the laws and oppressing the people with arbitrary domination dictated by arrogance, crime, and covetousness.[13] Kings were especially cautioned against condemning anyone to death arbitrarily without consulting others who could see that the laws of justice were properly observed.

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[10] Psalm civ, 15.

[11] I Kings, xxvi, 9.

[12] Perhaps *primates* refers only to the palatine officials; the civil code refers only to *primates palatii.*

The Political Philosophy of Isidore of Seville

The formulation of a political philosophy in an age which we are prone to consider so dark is rather surprising. The explanation of its existence lies in the fact that Isidore of Seville, the great Father of the Spanish Church, presided at the council. Its political philosophy was his. The ordinary political theory of the Church Fathers was that, though the institution of government was made necessary by the vices of human nature, it is a divine institution and the ruler is the representative of God commanding obedience in the name of God; whatever the conduct of the ruler may be he does not lose his character of divine representative, a good ruler being God's reward to a good people, an evil ruler His judgment on a sinful people.[14] St. Gregory the Great (590-604) both in his writings and practice was the most faithful exponent of this theory among the Fathers; in fact he seemed to go almost to the length of the Divine Right theorists of a later age, who made the ruler entirely absolute from the human viewpoint, deriving his power directly from God, accountable to Him alone.[15]

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[13] "Sane de futuris regibus hanc sententiam promulgamus, ut si quis ex eis contra reverentiam legum superba dominatione, et fastu regio in flagitiis et facinore, sive cupiditate crudelissimam potestatem in populis exercuerit anathematis sententia a Christo domino condemnetur, et habeat a Deo separationem atque judicium, propter quod praesumpserit prava agere, et in perniciem regnum convertere" (Mansi, X, 640).

[14] Cf. A. J. Carlyle, *A History of Mediaeval Political Theory in the West,* I^2, 147 ff.

But there are many turns and twists in patristic political ideas; the Fathers by no means adhere logically, not to say unanimously, to any one theory; least of all do we find Isidore of Seville consistent in the matter. Though he professes to see in the ruler the representative of God and to hold that evil kings are God's punishment on evil peoples,[16] he nevertheless "seems in the main to hold that the legitimacy of Government is determined by its character,—that it is only as far as the ruler promotes justice that he is to be looked upon as a true ruler at all".[17] This appears from the meaning he attaches to the word *rex*.[18] The attempt of Isidore to determine the etymological definition of the word makes translation awkward, but he says in substance:

> Kings (*reges*) get their name from ruling (*a regendo*). Now he does not rule who does not correct. A ruler acting rightly keeps the name of king, doing wrong he loses it. Hence the ancient proverb runs: 'Thou shalt be king, if thou doest rightly; if not, thou shalt not be king.' The royal virtues are chiefly two, justice and benevolence (*pietas*), but the latter is more praised in kings, for justice is in itself

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[15] *Ibid.*, 152 ff.

[16] *V.* his *Sententiae*, III, 48.

[17] Carlyle, I², 173-174.

[18] "Reges a regendo vocati. Sicut enim sacerdos a sacrificando, ita et rex a regendo. Non autem regit qui non corrigit. Recte igitur faciendo regis nomen tenetur, peccando amittitur. Unde et apud veteres, tale erat proverbium: 'Rex eris si recte facias, si non facias, non eris.'

"Regiae virtutes praecipuae duae, iustitia et pietas. Plus autem in regibus laudatur pietas; nam iustitia per se severa est.

"Tyranni Graece dicuntur. Iidem Latine et reges. Nam apud veteres inter regem et tyrannum nulla discretio erat. . . . Fortes enim reges tyranni vocabantur. . . . Jam postea in usum accidit, tyrannos vocari pessimos atque improbos reges luxuriosae dominationis cupiditatem, et crudelissimam dominationem in populis exercentes" (*Etimologiae*, IX, 3).

severe. Though the ancients did not distinguish between kings and tyrants, later usage has come to call by the latter name bad rulers who indulge their lust of ungoverned and cruel oppression.

Isidore would also have rulers obey their own laws: "The voice of their authority is just, if they do not allow to themselves what they forbid to their people."[19] He teaches that rulers are subject to the laws of religion and must proclaim the Christian faith in their laws and examples.[20] We have seen in the preceding chapter that much of this philosophy of Isidore was taken into the *Liber iudiciorum.*[21]

This then was the political philosophy that lay back of canon seventy-five. The Fathers were most desirous of internal peace; to secure it they realized that the position of the king should be strengthened and they endeavored to contribute their support, refusing, however, to exalt the kingship at the expense of principles and liberties which they held to be even more precious than peace.

Since the time of Justinian the Byzantine Emperor had been an absolute monarch, supreme not only in matters of State but also in the Church;[22] the Arian national Churches in their entire subservience to royal will naturally made for unlimited monarchy; but the old German tradition had been one of a limited ruler, and this ideal appealed to the Spanish Church. Limitation secured by popular assembly had become impossible with the growth of the Visigothic Kingdom, and the German spirit of liberty casting aside all restraint was expressing itself in ruinous revolt. The bishops, called upon to remedy this situation, refused to glorify the king with any theory of "Might makes right," or "The king can do no wrong." They based the duty of civil loyalty on direct obligation to God rather than on any divine character attaching to sovereigns, and they insisted on the subordination of kings to the law and their accountability to God for the just administration of the kingdom. That they were able to speak with such an air of authority arose from the fact that the kings had need of them against the nobles.

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[19] "Justum est principem legibus obtemperare suis. Tunc enim iura sua ab omnibus custodienda existimet, quando et ipse illis reverentiam praebet. Principem legibus teneri suis, neque in se posse damnare iura, quae in subjectis constituunt. Justa est enim vocis eorum auctoritas, si, quod populis prohibent, sibi licere non patiantur" (*Sententiae,* III, 51, 1-2).

[20] "Sub religionis disciplina saeculi potestates subjectae sunt; et quamvis culmine regni sunt praediti vinculo tamen fidei tenentur astricti, ut et fidem Christi suis legibus praedicent et ipsam fidei praedicationem moribus bonis conservent" (*Sententiae,* III, 51, 3).

[21] For another discussion of the political philosophy of Isidore, *v.* Otto Schilling, *Naturrecht und Staat nach der Lehre der alten Kirche,* pp. 213-225. Though it does not add anything to Carlyle's treatment, it offers the advantage of dealing with Isidore under a single heading, whereas Carlyle introduces him into several chapters.

[22] A. A. Vasiliev, *History of the Byzantine Empire,* I, 181 ff. (translated from the Russian by Mrs. S. Ragozin); U. v. Wilamowitz-Moellendorff, J. Kromayer, und A. Heisenberg, *Staat und Gesellschaft der Griechen und Römer bis zum Ausgang des Mittelalters*², pp. 368 f.

The principle of election insisted upon by the bishops was the Visigothic custom, though it was not then the vogue in the world. In the Byzantine Empire there was a dynasty; among the Franks, an hereditary royal family. But the Visigothic tradition was in harmony with the attitude of the bishops toward the kingship, and they retained and confirmed it by investing custom with the dignity of written constitutional law. Quite prudently and pardonably, when one considers the position of the bishops in the kingdom, they gave themselves electoral votes along with the nobles.

Taking up the case of the deposed Swinthila the Fourth Council condemned him for unspecified crimes and ordained that he, his wife, and children should never again be raised to honor; that, moreover, their possessions "*quas de miserorum sumptibus hauserunt*" should be confiscated with the exception of what the indulgence of Sisenand granted them.[23] Whether in the case of Swinthila the bishops acted illogically and dishonorably or not (and it cannot prudently be concluded that they did) their legislation was for the good of Spain. To have acted in a manner other than they did would have been unwise political procedure. In this case the usurper Sisenand was actually in power; to deny him support meant to plunge the kingdom inevitably into a chaos of sedition. This calamity, so frequent in the country as to be a veritable curse,[24] the council sought earnestly to prevent; hence their almost frantic pronouncements against it.[25] Two other canons of the Fourth Council condemned treasonable behavior on the part of ecclesiastics. Under threat of punishment by a council bishops on the confines of hostile powers were forbidden to enter into secret negotiations with a foreign ruler, and clerics who voluntarily and seditiously took up arms were to be degraded and sent to a monastery for penance.[26]

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[23] Leclercq administers a scathing castigation to the bishops for their treatment of Swinthila (*L'Espagne chrétienne*, pp. 302-304). Dahn, of course, took the same attitude and correspondingly influenced those who echo his opinion. It is well to recall here again that we lack all record

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of the latter five years of Swinthila's reign. That the bishops could have wantonly besmirched that king's good name seems quite incredible; he must have fallen into ways of cruelty as the years passed.

[24] Leclercq says grimly: « *Sous la monarchie visigothique l'état de conspiration semble devenu chronique* » (*op. cit.*, p. xxv).

[25] The facility with which Isidore of Seville transferred his eulogies from one king to the other in his *Historia* is rather remarkable. All the kings from the time of Recared with the exception of Witteric were lauded by him, though there remains the possibility suggested before that his praise of Swinthila was premature. On the surface it might seem that Isidore was a courtier, insincere, a flatterer who said the expedient thing, but the truth appears to be that he looked upon the king rather than the mere man; that it was not a case of personal affection, but of loyalty to his legitimate ruler and always to the kingdom (cf. Séjourné, *Saint Isidore de Séville*, p. 89). That Isidore had great admiration for the Goths is apparent from his tribute to them when he describes their mildness toward Christians and their regard for religion in their capture of Rome. He avers that even in his day Romans preferred to live as *pauperes* in the Gothic Kingdom rather than be *potentes* under the yoke of Roman taxation (cf. *Historia Gothorum*, 16).

[26] Canons 30 and 45.

King Chintila and the Fifth and Sixth Councils of Toledo

In 636 both Sisenand and Isidore of Seville died. Chintila, the newly elected sovereign, brother of Sisenand, almost immediately convoked the Fifth Council of Toledo. Though it would seem that royalty had been given ample support by the preceding council, this synod devoted itself entirely to the matter, reiterating and elaborating what had been previously decreed. Even the first canon which ordered an annual *triduum* of prayer, fasting, and abstention from work had for its object the good of the kingdom, the suppression of vice, and atonement for sin. In a document issued apparently at the end of the council Chintila approved of the " litanies " and took measures to secure their observance, his reason being: *" Non existit infructuosa si etiam sua* [*regis*] *industria placatur divina clementia."* [27] The all-important canon seventy-five of the Fourth Council was re-enacted; and it was ordered read at the conclusion of every council. As an addition to its specifications the new council ordained that the descendants of Chintila should be treated well and protected in their property rights. Excommunication and divine anathema were decreed against anyone who should seek in a superstitious manner to find when the king would die, or who should before the king's death make plans for the succession; cursing the sovereign was to incur the same penalty. A canon quite different in tenor provided that faithful servitors of a king were not to be disturbed in their possessions by a succeeding monarch for the admirable reason that otherwise no one would be inclined to render a king service. In offences against the provisions of the council the power of pardon was reserved to the king. It is evident that the Church was doing all in its power to strengthen the royal position.

After only two years, in 638, the Sixth Council was called by Chintila. Only twenty-two bishops had attended the preceding council; there were fifty-two present at this. Among its nineteen canons several again bear on the kingship. Excommunication and penance were prescribed as penalties for treason.[28] Respect for authority was inculcated by urging deference toward the officers of the palace; at the same time these dignitaries were reminded of the charity they owed their inferiors.[29] What the preceding council had ordained in regard to the faithful servitors of a former king was confirmed, and unfaithful servitors were thrown on the clemency of the sovereign. An indication of profound respect for the regal power appears in the reason given for this: "*Nefas est enim in dubium deducere eius potestatem, cui omnium gubernatio superno constat delegata judicio.*" If unfaithfulness was discerned even after the king's death, no escape from the penalty of confiscation was permitted.[30] The provision of the preceding council in regard to the royal descendants was repeated for the benefit of the children of Chintila.[31] Machinations for the throne in the lifetime of the king were condemned as well as plots against the king, and the qualifications required in a candidate for the crown were set forth. He was not to be tonsured or disgracefully shorn, of servile or foreign origin, but was to be a Goth of worthy character.[32] Evidently Chintila was a pious king, quite ready to depend on the Church, so that relations between Church and State were unusually close during his reign.

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[27] Mansi, X, 657.

The Severe Policy of King Chindaswinth

The futility of all this fine legislation and far-flung anathema became apparent only too soon. Chintila died in 640 and, as he had requested, his young son Tulga was elected. Thereupon a group of nobles offered the crown to Chindaswinth, one of their number, a lusty octogenarian (642).[33] He accepted, relegated Tulga to a monastery, and, as Fredegarius tells us, "knowing the disease which the Goths had of deposing their kings," resorted to methods more concrete than conciliar legislation and inaugurated a terrorizing policy of proscription. Executing some and exiling others he rid the country of those who aroused his suspicion as being dangerous to his crown.[34]

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[28] Canon 12.
[29] Canon 13.
[30] Canon 14.
[31] Canon 16.
[32] Canons 17 and 18.

To legalize his violent policy Chindaswinth in the second year of his reign drafted a law against political offenders.[35] He decreed that anyone who from the time of King Chintila to the second year of his own reign had fled to the enemy or to a foreign land with the intention of injuring the Gothic nation, or who should make a like attempt in the future, was to be punished by confiscation and death; likewise that anyone who from the first year of Chindaswinth's own rule plotted within the confines of the kingdom against the nation or the sovereign was to be punished in a similar manner. The king might be permitted to concede a penalty of blinding instead of death; as regards property he could at most vouchsafe a guilty person a gift equivalent to one-twentieth of the value of his confiscated estate. Zeumer sees the humor in Chindaswinth's time distinction for plotters within and without the realm. By striking at traitors at home before the beginning of his own reign the king would have become amenable to his own penalty, since he had risen to the throne by treason.[36] To secure the execution of this law the wily old sovereign had nobles, clergy, and people swear to support it.[37]

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[33] Fredegarius says of this usurpation: "*Gothorum gens impaciens est, quando super se fortem iogum non habuerit*" (*Chronicarum libri*, IV, 82).

[34] Fredegarius (*loc. cit.*) records that Chindaswinth put to death two hundred of his nobility and five hundred of the middle classes. The *Continuatio Isidoriana Hispana* speaks of Chindaswinth as "*demoliens Gothos sexque per annos*" (*v. Cont. Hisp.*, 26).

[35] *Leges Visigothorum*, II, 1, 8; cf. a discussion by K. Zeumer, "Geschichte der westgothischen Gesetzgebung, II," *Neues Arch.*, XXIV, 57-69.

[36] *Ibid.*, p. 58.

[37] *Ibid.*, pp. 61 ff.

Chindaswinth on Friendly Terms with the Church

In the early years of his reign Chindaswinth had to contend with civil war which was aided from Gaul and Africa. After putting it down even this self-sufficient sovereign, in 646, called a council, the Seventh of Toledo. In a preface to its decrees the council stated pathetically that there had been no lack of conciliar legislation to take care of the troubled kingdom, but that this had been unheeded, and that hence further legislation was necessary.[38] The remainder of the preface and canon one, which together seem to form a unit, legislated in regard to the tragic happenings of the reign. In softened form they restated the royal law on treason, declaring the ecclesiastical penalties attached to the crime. The clerics who took part in the civil wars just past and traitorously entered foreign lands for the purpose of injuring the Gothic kingdom and king, as well as their advisers and abettors, were to be degraded from ecclesiastical office and condemned to lifelong penance; they were to be given communion only on their deathbeds, and a bishop who even at the command of the king communicated such a person before he was dying would himself incur excommunication. The king might mitigate the old laws requiring confiscation of goods for treason only to the extent of allowing the guilty party one-twentieth of his former property. A cleric who in the lifetime of the king should side with an aspirant to the throne was to be excommunicated until he was dying, even if the pretender succeeded. Should the usurper prevent the excommunication of his partisan, it was to revive upon the protector's death. A layman who should enter a foreign land with treasonous intent was to be punished by confiscation and excommunication until death, unless through the intercession of the bishops with the king he obtained communion.[39] Speaking contumeliously of the king and plotting his death was to incur excommunication; whether such offenders could be admitted to communion at any time was to depend on the mercy of the king,[40] but in the case of those who went abroad with traitorous intent the king was implored not to remove the excommunication save by episcopal request.

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[38] Cf. Mansi, X, 764-765.

[39] Cf. Toledo VI, canon 12.

Dahn sees in the limitation of the pardon rights of the king an encroachment of the bishops on the royal power.[41] It may be well to recall that the king's law on treason (which Dahn erroneously considered to have been drafted after the council) practically eliminated all possibility of pardon. Another law of Chindaswinth, of later date than the council and perhaps incorporated into the code only under Receswinth, limited the king's mercy to offenders in matters concerning himself; treason against the nation he might pardon only at the request of the bishops and palatines.[42] The limitation of the pardon right could as well have been meant as a protection of the sovereign against imprudent mildness. Probably it can be best viewed as an appreciation of the paramount importance of the welfare of the State as bound up with the undisturbed sway of a particular ruler. Internal peace at almost any cost was the one desire of the bishops of the strife-weary kingdom. Dahn sees also in the support given Chindaswinth by the council a *volte face* on the part of the clergy, inasmuch as they previously took part in the civil wars against him.[43] Is it not rather an instance of the fact that the clergy are rarely united politically?

In its last canon the Seventh Council decreed that the bishops in the vicinity of Toledo were to spend some time each month, except for the harvest and vintage season, with the king and the metropolitan. This may be one of several indications that the king used these bishops as a sort of advisory board.

Chindaswinth deserves much credit for his work in connection with the legal code. We have already seen that it was he who conceived the plan of giving the kingdom a single code of laws. He framed many enactments of his own, but it was left for Receswinth to complete and promulgate the code. The outstanding contribution of Chindaswinth to the law was his reform of legal procedure. This will be discussed in the next chapter. It suffices to say here that he endeavored to secure justice in court for all, and championed the cause of his weaker subjects against their powerful oppressors. He gave the bishops an important rôle in the dispensing of justice.

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[40] Cf. Toledo V, canon 8.

[41] *Op. cit.*, VI^2, 451.

[42] *Leg. Vis.*, VI, 1, 7; cf. *N. Arch.*, XXIV, 64-65.

[43] *Loc. cit.*

To secure some guarantee of continued peace for the kingdom Braulio, bishop of Saragossa, with another bishop, Eutropius, and a Count Celsus, in the name of their clergy and people petitioned the king to associate his son Receswinth with him,[44] and Chindaswinth agreed. Evidently this departure from the elective system was not the pleasure of the bishops as a body, as can be inferred from the proceedings of the next council. Nevertheless, Receswinth held his throne—one of the few instances in which a royal scion was able to do so; he was doubtless more mature than the boy princes who had been dethroned, and better able to care for his own interests.

The Milder Policy Established by King Receswinth

Chindaswinth died in 653, and the nobles who had been cowed into submission by his heavy hand rose up against his son.[45] Receswinth succeeded in subduing them, but was disposed to placate rather than coerce them as his father had done. In token of this he convoked the Eighth Council (653) and laid before the assembled bishops a *tomus* in which he stated the things he wished remedied. Realizing that the legislation under his father against political offenders had been too strict, impossible in fact, he asked that this be mitigated. The law of Chindaswinth which decreed death or blinding, and confiscation for treason [46] had received the sworn approval of nobles, clergy, and people—and of Receswinth himself.[47] In his *tomus* Receswinth expressed objection to being bound by this oath and asked if it could not be abandoned in favor of leniency. This the council conceded after an interminable theological disquisition on the binding power of oaths, and the right of the king to commute the too rigorous sentences for treason was affirmed.[48]

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[44] Sancti Braulionis *epistolae*, XXXVII (Migne, *P. L.*, LXXX, 684-685).

[45] Taionis *sententiarum libri quinque*, "Praefatio" (Migne, *P. L.*, LXXX, 727).

The council was presumably in nowise loath to change the policies in vogue under the harsh old king. Fructuosus, bishop of Dumio, had written a letter to Receswinth (*ca.* 652) in which he urged that mercy was more in accordance with Christianity than the rigid observance of a cruel oath.[49] Eugene II, the metropolitan of Toledo, whom Chindaswinth had raised to his see against the wishes of Braulio, wrote an epitaph which probably reflected clerical opinion of the late sovereign. It is anything but flattering [50]; its frank disloyalty to the memory of the monarch scandalizes Dahn.[51]

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[46] *Leg. Vis.*, II, 1, 8.

[47] *V.* preface to Toledo VII (Mansi, X, 765, *sub fine*) and Toledo VIII, *tomus* and canon 2. Cf. Zeumer, *N. Arch.*, XXIV, 61-63.

[48] Canon 2. Strange to say Receswinth retained the laws of Chindaswinth with all their inflexibility in his revision of the legal code.

[49] "Epistolae Wisigoticae," MGH, *Epistolarum* tomus III, pp. 668-669.

[50]
Chindasuinthus ego noxarum semper amicus,
  patrator scelerum Chindasuinthus ego.
inpius obscaenus, probrosus, turpis, iniquus,
  optima nulla volens, pessima cuncta valens,
quidquid agit qui prava cupit qui noxia quaerit
  omnia commisi, peius et inde fui.
nulla fuit culpa, quam non committere vellem,
  maximus in vitiis et prior ipse fui.

—Eugenii Toletani episcopi, "Epitaphion Chindasvintho Regi conscriptum," MGH, *Auct. antiq.*, XIV, 251.

[51] *Die Könige der Germanen*, V, 197-198.

The Philosophy of the Eighth Council of Toledo on the Kingship

Shortly after it assembled the council memorialized Receswinth in a *decretum* which was levelled at abuses of Chindaswinth's reign.[52] It began by lamenting the fact that some kings looked upon the royal office as an opportunity to increase their own wealth and appropriated to themselves what accrued to them for public use; that instead of protecting the interests of the people they robbed them and even disposed of riches thus gained to their heirs. Rather rudely the council reminded kings, as it were, to "look unto the rock whence they were hewn, and to the hole of the pit from which they were dug out."[53]

> For would the tribute of the people and wealth of possessions have come to them if they had not been in the position of exalted glory, or would they have been enriched by their equals with heaped up wealth except they had been raised by their subjects to the glorious pinnacle?[54]

Powerful language this! The fiction which Augustus had tossed as a sop to the people, that his power came from them; the same idea preserved by the *jurisprudentes* and incorporated into the *Corpus iuris,* an empty shell, all that remained of Roman popular sovereignty, is now infused with life and spoken in deadly earnest by subjects to their kings. It is the spirit of ancient Teuton equality caught up and voiced by Catholic bishops, who recognized it as the spirit of Christianity. Here is anticipation of Runnymede, and a political philosophy strangely like that of the Spanish Jesuits in the seventeenth century, which found the well-springs of all political sovereignty in the people.

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[52] The address is to be found in Mansi X, 1223-1225 and is entitled: "Decretum in die secunda universalis concilii editum in nomine principis." Zeumer, in *N. Arch.,* XXIV, 46, note 3, calls attention to the fact that "*in nomine regis*" does not mean "in the name of the king," but here, as always in the Visigothic Code, denotes the person to whom the document is addressed. The contents of this memorial reveal quite plainly that it was not issued in the name of Receswinth.

[53] Isaias, lvi, 1.

[54] "Nam numquid ad illos aut populorum adventus [*v.* Du Cange, *s. v.*, *adventus,* especially *5, iocundus adventus = tributum, donum] aut rerum poterat concurrere census, nisi extitissent gloriae sublimitati culminibus? aut ab aequalibus illi potuerant rerum coacervatione ditari, nisi subjectis glorioso apice potuissent attolli?"

Mincing no words, the bishops go on: "*Regem etenim iura faciunt non persona: quia nec constat sui mediocritate sed sublimitatis honore.*" "The laws [evidently those which surround the kingship], not the person of the ruler make the king, because he does not rule by virtue of his own insignificance, but by his exalted office." Dahn with his veneration of royalty finds these "*sehr derbe Worte*"[55]; to our ears better attuned to democratic ideals they do not sound so harsh. The council was merely insisting that the customs and laws which brought the king into power, kept him there, and regulated the sway of his scepter, were the basis of his kingship, not any inherent superiority of person or worth. This conception of royalty agrees closely with the philosophy on the legislator and king expressed in the *Liber iudiciorum.* In fact, the code was promulgated shortly after the Eighth Council.

The moral of the bishops' memorial was: "What the kings accumulate in virtue of their office let them leave to the kingdom." Pointing then more directly at Chindaswinth the *decretum,* in words reminiscent of the two hundred *primates* and three hundred *mediocres* which Fredegarius says were victims of the king,[56] complained that many of the higher and middle classes had been put out of the way and their estates despoiled without gain to the *fiscus* or to the palatine offices. The phrase referring to the palatines is most perplexing, but in the light of what follows it appears that the council considered it a double blow to the nation to lose a wealthy citizen through proscription and at the same time to receive no benefit from his property. The complaint reached its climax: "The maw of the ruler has been glutted, the rest of the members, the nation, have languished." Concretely and practically the bishops proclaimed in conclusion that the royal property of Chindaswinth was to be taken over by Receswinth, not as his son, but as the royal successor; that restitution was to be made to those who had been unlawfully defrauded and the rest of the wealth employed according to the will of the prince for the good of his subjects. The private property of Chindaswinth was to descend to his natural heirs.

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[55] *Op. cit.,* VI^2, 543.

[56] *V. supra.*

Receswinth on his part presented an edict to the council, which he caused to be incorporated into the Visigothic Code as a law.[57] Superficial reading of this would seem to indicate that Receswinth was quite in agreement with the none too softly worded memorial of the council to him; deeper examination reveals him as interpreting things differently and arranging matters entirely according to his own interests.[58] The edict opened with a moral generalization on the duty of a king toward his subjects. Then it inveighed against the avarice of former kings, and Receswinth in true Byzantine language feeling himself "*superne respectionis adflatu . . . divinitus inspiratus*" promised to bridle princely excesses. A king was forbidden to deprive anyone of his property by exaction; documents recording any transfer of property were to be considered void if gained by fraud or oppression, and the property was to revert to its real owner. Free gifts to the king, however, if proved by proper documents were to become his permanent property.

The memorial of the council had quite evidently been directed at the exactions of Chindaswinth and had severely limited Receswinth's disposition of crown wealth. The king's own law also decried the avarice of preceding rulers, but without singling out Chindaswinth in any way. Instead of limiting the right of

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[57] *Lex edita in eodem concilio a Reccesvintho principe glorioso* (Mansi, X, 1225-1227); *Leg. Vis.*, II, 1, 6.

[58] Zeumer, "Geschichte der westgothischen Gesetzgebung II," *N. Arch.*, XXIV, 45-57, makes a penetrating analysis of this law.

Receswinth to the crown property of his father it reached back, seemingly as far as the law of prescription would permit, to Swinthila (631) and reclaimed from private heirs, not indeed all the crown property left by these several kings, but such as was left without testamentary disposition.[59] The same regulation was made applicable to the future. Thus Receswinth reserved to himself the right to make disposition of crown property to his heirs, and at the same time insured himself a generous return from his law, since his predecessors, secure in the custom of letting royal property devolve upon their heirs, undoubtedly had failed to make definite disposition of much crown wealth. The law stated expressly that it was the right of a ruler recovering such goods to dispose of them freely and provided that all private wealth of a king should descend upon his natural heirs even without testamentary provision. In conclusion insurrection and machinations against the king were condemned under pain of excommunication, and, as regards the sanction of the law itself, a palatine or cleric who criticized or attempted to violate it was to suffer severe penalties.

The general opinion of historians has been that Receswinth was a weakling king, helpless before the council, meekly bowing before the execrations heaped upon his father. The interpretation of his law reveals quite the contrary. The only limitation he suffered upon himself was one forbidding the fraudulent seizure of property. By an *ex post facto* law, retroactive through a period of thirty years, he appropriated to himself crown property from the heirs of his predecessors and yet established his own complete control of this property on a legal basis. In truth, Receswinth was a very astute politician.

The council would seem to have been nonplussed; one would think that they failed to understand that the enactment of the king was practically the contradictory of their own memorial. Strange to say, they ratified both documents and demanded their observance.[60] They made no reference to the fact that the king reached back to Swinthila to claim crown property. Against the spirit of their own memorial they agreed with Receswinth in limiting the claim of a succeeding king to royal properties not disposed of by testament, while they feebly urged that kings were not to use royal wealth selfishly, "*prospectantes proprii commodi, sed consulentes patriae atque genti.*"[61] Naturally they echoed his law forbidding confiscation by means of fraudulent papers.[62]

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[59] "*Inordinata,*" *v.* Du Cange.

[60] Canon 13.

However, in one instance they showed their independence of the king. Receswinth had condemned sedition; they did likewise, but they added a clause on the election of sovereigns regarding which the king said nothing. The council did not intend to permit Receswinth's hereditary succession to change Gothic custom. As if condemning Bishop Braulio's interference in favor of the reigning sovereign they laid down anew the method of choosing a king. He was to be elected in the royal city, or in the place where the predecessor died, by the higher nobles of the palace and the bishops, not by any petty conspiracy or seditious body. Whether or not the Fourth Council of Toledo (633) had meant to include all the nobles in specifying the *primates totius gentis* as voters with the bishops, now only the palatine nobles were to assist in the election, probably about the same group which attended the councils. There would seem in any case to have been little change: since all the nobles could scarcely assemble for an election, it would normally devolve on the palatines. According to this arrangement the bishops would have a larger vote than the nobility, but it would seem that the episcopal voters would in practice be limited to those of the vicinity—those who met each month with the king and the metropolitan of Toledo. In regard to the qualifications which the council insisted on as requisite in a king, he was to profess the Catholic faith and be ready to defend it against Jews and heretics; he was to exemplify modesty in his acts, judgments, and life, and economy in his administration. No one was to become king until he had sworn to observe the rulings of this canon.[63]

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[61] Canon 10.

[62] *Loc. cit.*

The Eighth Council reveals a considerable change in the relations of Church and State. Hitherto the bishops had championed the cause of royalty, though always with moderation. In this council the Church sided with the palatines against royal tyranny. Receswinth was probably little pleased with the action of the synod. Whether, however, any significance can be attached to the fact that he did not ratify its decrees is difficult to say; his father had not ratified those of the preceding council. The Ninth (655) and Tenth (656) Councils of Toledo, which met in his reign, were not addressed by Receswinth. They confined themselves rather strictly to matters ecclesiastical. Only one piece of legislation in them touches on the kingship: the Tenth Council renewed the decree deposing clerics who violated their oath and plotted against king and country; pardon was reserved to the king.[64] A provincial council held at Merida in 666 provided that while Reseswinth was at war the bishops should offer mass daily for him and his army. Why there were so few councils in this twenty-year reign it is impossible to say. Doubtless, ecclesiastical discipline suffered much as a consequence.

Receswinth reigned until 672. Amiable, but personally debauched,[65] he allowed military discipline to relax and left his kingdom greatly weakened. His reign was proof that hereditary succession had no utopian possibilities for Gothic Spain. It was an anticlimax to the reign of his father, something like that of Louis le Debonnaire following the reign of Charlemagne, though Receswinth lacked even the virtue of the Pious Louis, and certainly Chindaswinth may not be even remotely compared with Charles the Great.

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[63] Canon 10.

[64] Canon 2.

[65] The *Continuatio Isidoriana Hispana* (34) says: "Chindas Reccesuintum licet flagitiosum, tamen bonimotum filium suum regno Gothorum proponit."

The Reign of King Wamba

At the funeral of Receswinth popular choice called upon Wamba, a Gothic noble, to assume the crown. In great distress he begged to be excused from accepting the honor. The crowd would not be denied, and a nobleman threatened to kill him on the spot if he refused to be king. Wamba finally accepted, but delayed nineteen days before assuming the dignity, lest he should seem to act rashly. He repaired to Toledo and was anointed king by the metropolitan, Quiricus.[66] He ruled for eight years (672-680) and was one of the most efficient kings the Goths ever had.

Serious rebellion arose early in his reign and one of the *duces,* Paulus, set himself up as ruler in the northeastern part of the kingdom. Wamba put down the revolt in a series of victories and reduced the usurper to the most abject condition.[67] The rebellion probably made Wamba painfully aware of the weakness of the military arm. He accordingly decreed under very severe penalties that in time of hostile invasion military service should be obligatory for every person in the vicinity, not excluding the clergy.[68] This denial of immunity to the clergy had been quite unheard of since the days of Constantine.

Striking at an abuse in the Church a royal law forbade bishops to take from churches in their dioceses offerings made by the faithful, or to presume to retain such offerings on a plea of prescription after holding them for thirty years.[69] Wamba called two provincial councils in 675, one at Toledo and another at Braga. Eighteen years had elapsed since the Tenth Council, and legislation in these synods bears sad testimony how morality and discipline among the clergy had sunk; neither council touched upon the kingship.

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[66] These circumstances of Wamba's election are told by Bishop Julian of Toledo: *Historia Wambae Regis* (MGH, *Script. rer. Meroving.* t. V, 486-535), 2 and 3.

[67] The *Historia Wambae* gives the history of the revolution.

[68] *Leg. Vis.,* IX, 2, 8.

[69] *Leg. Vis.,* IV, 5, 6.

King Erwig and the Twelfth Council of Toledo

In 680 Wamba fell sick and while unconscious was, according to the current custom, made a penitent—tonsured and clothed in penitential garb. Becoming conscious again he yielded the throne to Erwig, a nobleman who stood in his favor. Such a sudden change quite naturally aroused suspicion against Erwig; his right to rule was challenged. In dire need of help he appealed to a national council, the Twelfth of Toledo, which took up the delicate matter of his right to the throne. He presented three documents for the consideration of the assembly: one, an account of Wamba's admission to penance; of the other two, which bore the signature of Wamba, one was a report of the appointment of Erwig as successor, and the other, an order to Bishop Julian to consecrate the new king. These the council pronounced genuine. The people were declared free of their oath to Wamba and bound to Erwig; offenders against the latter were threatened with spiritual penalties.

In the next canon the council took up the matter of penance; it compared the admission of an unconscious person to this state with the baptism of infants, and declared for the binding effect of such an act. Persons who became penitents were not to return to their old life, especially to the "*militare cingulum.*" In conclusion it struck at possible abuse by decreeing excommunication for a year against any cleric who should admit to penance an unconscious person, unless he had in some way requested it. In its discussion of the penitential discipline the council was technically in accord with well established custom in the matter,[70] but a law of Chindaswinth had expressly excused from the obligations of penance a person who had been admitted to the state while unconscious, unless he had previously requested it.[71]

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[70] Cf. The Council of Agde (506), canon 15; the First Synod of Orleans (511), canon 11, forbade penitents to return to secular life under pain of

These are the meager facts we possess. A conclusion that there was a trail of intrigue winding through the events is almost inevitable, and legend has long since fitted stories to these facts. Sebastian of Salamanca writing two hundred years later left the first record of such fictitious details: Erwig administered to Wamba a poisonous sleeping potion, and while the king was unconscious he was made a penitent. Upon recovery, not suspecting the usurper's guilt, he bestowed the kingdom on him and himself retired to a monastery, where he lived for some years. This is mere legend and the historian is thwarted at every turn by the insufficiency of the evidence. Many and various have been the theoretical solutions based upon the facts.

Tailhan has an ingenious theory to the effect that Wamba was dead before the council convened. He maintains that had the dethroned monarch been alive nothing but his word would have sufficed to quiet wagging tongues, and the mere presentation of documents without his personal confirmation would have magnified rather than allayed suspicions.[72] The theory seems

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excommunication; cf. the Synod of Epaon (517), canon 23; the Third Synod of Orleans (538) forbade those who had received the *benedictio poenitentiae* to return to secular life or to the *militia;* the Synod of Barcelona (540), canon 6, ordained that penitents must shave their heads, wear religious garb, and dedicate their lives to prayer and fasting; that they must not participate in banquets or trade, but should lead frugal lives in their homes; that sick persons who requested and received penance were to live as penitents on their recovery; cf. Toledo III, canon 12; Toledo IV, canons 54 and 55; according to Toledo VI, canon 7, penitents reverting to secular life must be constrained to return to their discipline; canon 8 of the same council made a concession to a young married person who had received penance when in danger of death, and allowed such a person to return to the conjugal partner; cf. Toledo X, canon 6; Toledo XIII, canon 10. *V.* Oscar D. Watkins, *A History of Penance,* II, p. 552 and *passim.*

[71] *Leg. Vis.,* III, 5, 3.

[72] *V.* his *Anonyme de Cordoue,* p. 102, as cited by Hefele-Leclercq, *Histoire des conciles,* III, i, 540 ff., note 2.

plausible, but it does not solve all difficulties. The attention which the council gives to the matter of penance [73] and which on the face of it looks like an attempt to keep Wamba from returning to the throne might be construed as a decision of the bishops to the effect that all had been carried out according to the penitential discipline and that Wamba had really become ineligible to rule. Thus it would amount to a subtle defence of Erwig's position against those who might accuse him of deposing Wamba. It is possible that the council was striving to lay down a ruling which would prevent abuses in the imposing of penitential obligations without offending the king by criticizing the manner in which he had succeeded. A greater objection to Tailhan's hypothesis seems to lie in the fact that the council freed the subjects from their oath to Wamba [74]; perhaps, however, this could have been intended to dissipate any perfervid loyalty to the memory of Wamba operating in prejudice of Erwig.

The two documents presented by Erwig with respect to his succession would seem to have been forgeries. Wamba had scrupulously observed Gothic custom at the time of his own election; he would scarcely have violated it for sake of a mere favorite by arbitrarily appointing him successor. Even had he done so he would not have trusted to writing, but would have made a public statement before bishops and palatines, which could not be questioned. Yet the council accepted them as genuine. In truth, it is difficult to see how they could have done anything else. To doubt the word of the *de facto* king would have plunged the kingdom into a maelstrom of revolution. But the bishops may have been well content to be rid of Wamba. Some of his legislation, discussed above, inasmuch as it touched the clergy, may have alienated them from him, though it was not severe enough to make this seem probable. The council did score Wamba severely for ordering new dioceses established in

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[73] Canon 2.

[74] Canon 1, *sub fine.*

Spain without proper ecclesiastical authorization, especially one at Aquis in Lusitania and one in a suburb of Toledo.[75] Gams thinks this canon reflects the ambition of Bishop Julian, who resented the dividing of his diocese.[76] He feels that Wamba's offence in this matter was at most slight, and that Julian himself was guilty of a far greater arrogation of power in securing for his see the right of approving, consecrating, and installing bishops in all the provinces of Spain.[77]

In his *tomus* Erwig had requested the bishops to mitigate the legislation of Wamba, which for failure to serve in the army had degraded nearly "half of the people" and by taking from them the right to testify had injured the cause of truth.[78] The council decreed that such offenders should be restored to their titles of nobility and their right to bear witness.[79] In accordance with old legislation the right of pardoning civil offenders was declared to rest solely with the king, and those pardoned by him were to be likewise admitted into the communion of the Church.[80]

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[75] Canon 4.

[76] *Die Kirchengeschichte von Spanien*, II, ii, 214 ff.

[77] Canon 6. On Julian, *v.* Smith and Wace, *Dictionary of Christian Biography*, III, 477-481. The life of Julian written by Felix, his successor in the see of Toledo, says nothing about his political activities, but describes him as a very virtuous character (cf. *Vita S. Juliani auctore Felice episcopo Toletano Juliani successore*, ed. in *Acta sanctorum*, Martii t. I, 784-785). Paul à Wengen in his *Julianus Erzbischof von Toledo* holds that Erwig knowing that the strong clerical party was dissatisfied with Wamba's high-handed rule felt that he could command their support. Accordingly he attempted to poison the king. When the poison failed to have deadly effect Erwig called in Julian of Toledo, who readily made the unconscious sovereign a penitent and espoused the cause of Erwig (*v.* pp. 12 ff.).

[78] *Leg. Vis.*, IX, 2, 8.

[79] Canon 7.

[80] Canon 3.

The Thirteenth Council of Toledo and Limitation of the Royal Power

In 683 Erwig called the Thirteenth National Council. The first canon, according to the wish of the king expressed in the *tomus,* restored position and confiscated property to those who had taken part in the rebellion of Paulus against Wamba. This indulgence was also extended to similar offenders since the time of Chintila. Erwig was endeavoring to strengthen his position by binding to himself groups disaffected in preceding reigns, especially the enemies of Wamba.

The council confirmed certain rights of the subjects, which, though contrary to the prerogatives of the crown, were all of them suggested by the king himself. No palatine or cleric was to be demoted from his dignity, chained, flogged, deprived of his goods, or imprisoned, as had frequently happened in the past, by an arbitrary act of the king, but an accused person was to be accorded a just trial.[81] As for nobles not of palatine rank, though the king might have them beaten (as was customary for small offences), yet they were not therefore to be degraded or punished by confiscation. Any person accused of infidelity to the State was to be granted a fair trial. The king was warned that for violation of these rights he would be cursed by God and condemned to eternal punishment.[82] A royal edict [83] which remitted taxes due to the State up to the first year of Erwig's reign was confirmed.[84] Kings were forbidden to raise slaves or freedmen other than those belonging to the *fiscus* to the rank of palatines, lest they should take advantage of the position to persecute their former masters.[85]

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[81] Canon 2.

[82] "In conspectu altissimi Dei Patris et unigeniti Filii eius, atque Spiritus sancti perenni anathemate ultus, et divinis vel aeternis addicetur ardoribus concremandus" (canon 2).

[83] *V.* Appendix to council, Mansi, XI, 1077-1078, or Zeumer, *Leges Visigothorum,* pp. 479-480.

[84] Canon 3.

[85] Canon 6.

These three canons—especially the first—were a powerful check on royal despotism; they were an eloquent expression both in content and manner of the comparative weakness of Erwig's position. Legislation in favor of the king's family is a further indication of this. Anathema and judicial condemnation were threatened against anyone who should persecute, rob, or force into penance the royal children, their partners in marriage, or the queen.[86] Under extravagantly worded spiritual penalties marriage with a widowed queen or illicit relations with her were forbidden even to a king.[87] The alleged reason is one of propriety. While it can be considered as an attempt to throw a circle of respect around the kingship, Dahn may very well be correct in assigning a political motive for this piece of legislation. He says that the council wished to prevent the widow of a king from playing a rôle in the war of parties, a thing which had often occurred. Pretenders to the throne were not to seek her hand and use her prestige and riches as weapons against a lawfully elected king.[88] Could not the matter also be attributed to a whim of Erwig, even though there was no indication of this in the *tomus?*[89] At the conclusion of the council Erwig promulgated an edict approving its decrees singly and adding to the excommunication for disregarding them a fine or fifty stripes.[90] The Fourteenth Council of Toledo (684) dealt only with the question of recognizing the Sixth Ecumenical Council.

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[86] Canon 4.

[87] Canon 5.

[88] Dahn, *Die Könige der Germanen*, VI^2, 473.

[89] Scarcely such a whim as Hodgkin suggests: "Evidently the conscience-stricken and suspicious king thought that his best guarantee against premature saintship was to be found in the presence in his sickroom of one person who could in no conceivable circumstances gain by his downfall" ("Visigothic Spain," *The English Historical Review*, II, 231). By a council held at Saragossa (691) under King Egica widowed queens were obliged to enter a convent. Dahn suggests that perhaps Egica was protecting himself against possible machinations of his mother-in-law, the widow of Erwig (*op. cit.*, VI^2, 480).

[90] This summary was later incorporated into the legal code: *Leg. Vis.*, XII, 1, 2.

The Reign of King Egica

Erwig died in 687 asking that Egica, a relative of Wamba, and probably his own son-in-law, be appointed successor to the weakened throne; and his request was granted. The new sovereign called the Fifteenth Council in 688. In his *tomus* he stated that his predecessor had obtained from him two oaths: to be solicitous in all things for the sons of Erwig; and to be just toward his subjects. Egica professed to feel that these oaths were in conflict, especially since those ill-treated by Erwig clamored for justice; and he asked the council how to solve his difficulties. The bishops decided that in case of conflict the oath concerning the general good was to take precedence, but they likewise declared that there was nothing dangerous in an oath to protect his sons which Erwig had required of all his subjects.

To deal with the treasonable conspiracy of Sisbert, metropolitan of the royal city, Egica in 693 called the Sixteenth Council of Toledo. Besides a *tomus* the king presented to the council a separate document referring to this matter.[91] Sisbert, of noble Gothic birth, successor to Julian in the see of Toledo, headed a conspiracy against the king. The council accused him not only of seeking to dethrone Egica, but of plotting to murder him and his children. Having previously been deposed, he was in accordance with the old canons exiled, excommunicated, and his goods were confiscated; he was to be given communion only at the end of his life.[92] In general, as the *tomus* of the king suggested, those guilty of conspiracy or treason were to lose their rank and to become slaves of the *fiscus,* while their goods were to belong to the king; the right of pardon was reserved to the sovereign. The synod heaped triple anathema and excommunication on those guilty of treasonable conduct.[93] After commemorating the public virtues of Egica the council ordained that all the people of the kingdom should be solicitous for the welfare of the royal family; on every day except Good Friday mass was to be offered and prayers recited in the churches for the king and his family.

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[91] *V.* Mansi, XII, 83-84.

[92] Canon 9.

[93] Canon 10.

In the following year (694) the Seventeenth Council was held. The reason for calling it, as set forth in the royal *tomus,* was a conspiracy which the Spanish Jews formed with their coreligionists of Africa for the purpose of overthrowing Gothic rule and Christianity in Spain by inviting the Arabs into the Peninsula. The anti-Jewish legislation which prompted this conspiracy will be dealt with in another chapter. Taking up this problem the council lamented the fact that Jewish converts to Christianity had apostatized, and decreed that the conspirators should be deprived of their goods and reduced to slavery; they were not to be permitted to practice their Jewish rites, and their children were to be taken from them at the age of seven to receive Christian training.[94]

Egica ruled with a much heavier hand than his predecessor; he seems to have been more of the caliber of Chindaswinth and Wamba. He repudiated the policies of Erwig and reverted to those of his kinsman Wamba. However, that he belonged to the Gothic as opposed to the Byzantine-Roman party or that he was not kindly disposed toward the Church, as some historians maintain, are conclusions scarcely justified by our scanty evidence.

The Last Years of the Kingdom

For a time conspiracies brought a round of confiscations, banishments, imprisonments, and death sentences; then peace settled on the kingdom in its last years. Egica gave the crown to his son Witiza, and, when his father died in 702, Witiza continued to rule without being elected. He called a council to Toledo in the same year, the minutes of which are unfortunately not extant. Thus we are deprived of an invaluable source for conditions on the eve of the Moorish invasion, and hence left in the dark as to the actual relations of Church and State in Spain when the Visigothic Kingdom came to an end. The manner in which the kingdom passed out of existence is clouded by legend and fiction.

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[94] Canon 8.

After the disgraceful episode of Bishop Sisbert's treason and summary deposition Felix shed glory upon the see of Toledo and was counsellor to Egica and his son. Guderic, his Gothic successor, was a pious bishop. The incumbent in 711, the shadowy Sindered, is accused of being imprudently strict with his clergy and of deserting his stricken church before the Moorish invaders.[95]

Witiza has been much maligned by writers beginning with the early ninth century, who accuse him of the grossest immorality and of leading the Spanish clergy into vicious ways.[96] Apparently this is mere legend, since an almost contemporary source praises him as a benign ruler, who relaxed some of the harsh penalties of his father. He recalled exiles and made restitution for extortions.[97] It seems, however, that conspiracies disturbed his reign. He died a natural death (*ca.* 709) and was succeeded by Achila, a member of his family. The latter was soon after defeated by Roderick, who had been elected king by an opposition party. Spain, disunited, was in no position to face an invasion, and Roderick apparently perished (712) striving vainly to stem the Arab tide that poured in, the last of the Gothic kings.[98]

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[95] On these bishops *v.* the brief references in *Continuatio Isidoriana Hispana*, 60, 63, and 69.

[96] *A Dictionary of Christian Biography*, IV, 1192.

[97] *Continuatio Isidoriana Hispana*, 58-59.

[98] Cf. *The Cambridge Medieval History*, II, 182 ff.; Jules Tailhan, "La ruine de l'Espagne gothique," *Revue des questions historiques*, XXXI (1882), pp. 375-408.

II. *Recapitulation: the Kings and the Bishops*

The Bishops as Allies of the Kings

The preceding detailed outline of the relations between individual Gothic kings and the Church shows that consistently through a period of over a hundred years the union of the two was most intimate. The kings were invariably the prime movers in negotiating and continuing the close alliance with the Church. Conditions of their time and the needs of the kingdom prompted them to call in the bishops as their advisers and to exalt ecclesiastical councils to such a remarkable position in matters of State. They could not build their power upon the Gothic nobles. Though the latter were the strongest body in the State, theirs was a body without cohesion, and a force which the kings could not hold in leash. Their inveterate inclination toward conspiracy kept the throne in constant danger. A king enthroned by them, perhaps in consequence of sedition instigated by himself, could scarcely hope to escape intrigue. Furthermore, the nobles did not possess the learning and prudence that could make for a good parliamentary body; neither was their prestige great among the people.

On the other hand, the bishops were the most competent advisers the king could have chosen; in culture and prudence they were far superior to the nobles; they were thoroughly familiar with Roman institutions, on which the Gothic kingdom had superimposed itself, and especially with Roman law; in their various dioceses they enjoyed a position and prestige which made them virtually the heads of their *civitates.* The bishops realized that a strong central government was the obvious salvation of Spain. Sedition had a rather natural appeal for the nobles; it could scarcely offer any lure to the prelates. The latter were devoted by their office, as well as by self-interest, to the pursuit of peace. Their people and their churches suffered in times of political struggle; their pastoral office made them zealous for internal quiet as conducive to the best interest of their flocks.

The capitulation of Recared and his people before the spiritual power of the Church placed the bishops in a position of great dignity in the kingdom. Relations between the civil and ecclesiastical societies became most friendly; the first Catholic king, as we shall see later, freely utilized the bishops in the internal administration of his kingdom. But for forty years the Church was not called upon to interfere directly in favor of any king. Then Sisenand seized the crown. His throne built on conspiracy tottered; revolution could again unseat a king whom it had elevated. The usurper bethought himself of the one power within his kingdom on whom he could rely, of that splendid array of bishops who had gathered about Recared at Toledo, and he called them to his aid. The bishops did not fail him; that celebrated canon seventy-five of the Fourth Council of Toledo (633) set the authority of the Church against the powers that threatened the stability of the kingdom. Upon this fundamental legislation succeeding councils built up laws that hedged the kingship about with all the protection the Church felt it could in good principle give. Yet anxious as the bishops were for peace and order, they refused to purchase them by exaggerating the power of the king or making him absolutistic. The kingdom was to them always above the ruler.

Custom age-old among the Visigoths called for an elective kingship. The bishops respected this ancient constitutional law; but realizing that custom alone could not be relied upon to secure a just accession in the stormy period of an interregnum, they formulated the rules of election and the qualifications of the candidates, raising custom to the dignity of written law. But, though they could formulate the law, they could not enforce it. Chintila was elected after Sisenand, but thereafter heredity, insurrection, or intrigue created the rulers with the single exception of Wamba. The choice of Wamba, though it was not entirely in accordance with the conciliar rules of election, makes one believe that the elective system, if it had been consistently followed, might have worked out very happily for Spain. Had the kings framed such a law and incorporated it into the civil code perhaps the custom might have commanded more respect. However, the civil code did not deal with constitutional law, and this particular point the kings themselves were not in sympathy with, since most of them were ambitious of founding a dynasty.

In the revolution which carried Chindaswinth into power the bishops beheld the frustration of all their efforts to give the throne stability. Conspiracy, treason, civil war, a rule of iron and blood followed; and then even Chindaswinth resorted to a council (646). Again, and desperately now the bishops enacted legislation and decreed penalties to secure the peace of Spain. So drastic did the laws become that Receswinth and the Eighth Council (653) with good reason softened them.

Attempts of the Bishops to Limit Royal Autocracy

Beginning with the Eighth Council there is a change of policy. Hitherto the synods had championed the cause of the kings. But Chindaswinth had grown too cruel, and now the bishops sought to curb royal ruthlessness and rapacity. A number of palatine officials attended this council; henceforth the alliance was with them rather than with the King, though only to the extent of demanding justice.

Wamba (672-680) had no need of a national council. His undisputed election left him legally secure; his masterful character made him rather capable of looking out for the interests of the crown. Whether churchmen, and especially Bishop Julian, were implicated in any way in the plot which brought his fall we cannot say. Certainly it was for the good of the kingdom that the bishops supported his successor, whether he ascended the throne by fair means or foul. The rights which the bishops secured from Erwig (680-687) were of no special advantage to the Church; they were rather for the benefit of the palatines, the principal one being a *habeas corpus* act founded on natural law. With Egica (687-702) the pendulum swung back; he was better able to dictate to the bishops and secured their endorsement of a rather high-handed rule. Witiza (700-710) was a more benign ruler than his father had been. If the facts were available for the last years of the kingdom they would probably show little change in the relations between king and Church.

Visigothic Spain an Erastian State

It really seems strange in the light of the historical evidence that the general belief should be that Visigothic Spain was a theocracy, or, to be more exact, a hierocracy. Presumably because the bishops had so much to do with the civil government it was thought that they necessarily controlled it. Dahn admits that the powers which the kings held—the appointment of the metropolitans of Toledo and of bishops for all Spain, the right to call the national councils and sanction their decrees—could well have given them control over the Church; that judging from these powers one would presume that the Church was subject to the monarchs. However, Dahn insists that the kings were in reality dependent on the bishops, and that the Church ever looked upon itself as the controlling partner in the alliance with the kings.[99]

It is difficult to see how the distinguished historian of the barbarian invasions arrived at such conclusions. Even a superficial study of the councils would suffice to gainsay his opinion. One can scarcely think of a dignified body of men more subservient to successive rulers than were the councils of Toledo. The bishops at the Fourth Council inveighed against sedition, but they gave Sisenand, who had risen by revolution, their earnest support. As we have seen, we do not know whether they had good reason to condemn the dethroned Swinthila or not, but the fact remains, whether Swinthila was a good or bad king, that the council acceded entirely to the wishes of Sisenand. Certainly the harshness of Chindaswinth must have displeased many of the churchmen, but they took oath to support his violent law on treason, and at the Seventh Council of Toledo they did the king's pleasure by legislating against traitors in a manner only less severe than his own. The following council proved that the bishops had really been dissatisfied with the preceding reign. At Receswinth's request they declared themselves in favor of clemency to political offenders. They even addressed the new king boldly on the subject of his father's avarice and sought to prevent future rulers from enriching themselves and their families at the expense of the *fiscus*. But when Receswinth passed a law which criticized his predecessors and enriched himself at the expense of their heirs, a law which ran counter to practically all the requests of the council, they made no protest, nor did they strive to attain their point by strong remedial legislation of their own.

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[99] *Die Könige der Germanen,* VI^2, 492 ff.

Throughout a period of twenty years during the reigns of Receswinth and Wamba no council met at Toledo; evidently the bishops did not feel powerful enough to convene on their own initiative, even though the welfare of the Church seemed to demand it. The history of the abdication of Wamba is so obscure that it is useless to attempt to trace it to Church influence. If Bishop Julian was really implicated in the matter he would seem to have been possessed of astuteness in politics unknown previously among the Spanish hierarchy. If the bishops of the Twelfth Council knew that Erwig had gained the throne by treason and deceit it was disgraceful to support him. Their action may have been dictated by prudence, but it certainly was not an indication of great political strength on the part of the Church. The concessions which the Thirteenth Council secured from the weak Erwig, though generous, were by no means subversive. On their part the bishops threw protective legislation about the royal heirs, which could well have encouraged the king in a policy of rapacity.

When Egica threw over the policies of Erwig and reverted to the old method of dealing severely with political offenders the councils conformed to his wishes. When he sought release from the oath he had taken to protect the sons of his predecessors the bishops declared the oath void wherever it interfered with the good of the State. Very agreeably, however, they legislated in favor of the children of Egica. Probably the records of the Eighteenth Council, were they extant, would have shown them approving Witiza's relaxation of his father's penalties and extortions.

The facts, then, reveal the bishops as recognizing any king who obtained the throne, giving him loyal support, thoroughly obsequious to his will. This attitude of theirs was prompted by their desire for peace, their realization of the fact that civil strife was the great evil of the kingdom. Probably their indiscriminate support of the kings was for the best in Visigothic Spain. We have seen that the principles of the councils were invariably high, and their political philosophy admirable. Their constant purpose was an orderly constitutional election of a qualified candidate to the throne, the prevention of revolution, the exaltation of the kingdom above the king and of the office above the person of the ruler, and the protection of the governed against royal lust of wealth. In practice their principles were constantly nullified. Only in two cases after they formulated the law on elections were sovereigns elected—Chintila and Wamba; several times they had to accord approval to sedition successfully accomplished. Sovereigns insisted on inverting the relative importance of kingdom and king, and their avarice would not be regulated. The councils laid down fine principles, but high as these principles were they were seldom translated into reality. The bishops were quite powerless with only their spiritual arm to achieve their political ideals without the aid of the kings. It is surely then contrary to truth, in the face of all this, to maintain that the relations of the bishops with the kings were such that the kingdom could be called a hierocracy.[100]

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[100] Pérez Pujol insists most emphatically that the kingdom was not

There is no reason for saying that the bishops caused revolution. In the case of Sisenand there is nothing to show that the clergy were involved in his usurpation. Nor did any churchmen help Chindaswinth to the throne; the clerics, evidently few, who conspired against this usurper were roundly condemned by the large gathering of bishops at the Seventh Council of Toledo. A few bishops participated in the insurrection of Paulus against Wamba,[101] but it was in no sense an ecclesiastical uprising. If Julian aided in the overthrow of Wamba he was not assisted by the other ecclesiastics. The case of the traitorous Bishop Sisbert in Egica's reign is unparalleled in the annals of the see of Toledo; it is significant that he was a Goth. On the contrary, the councils did all in their power to prevent revolution. Even though their efforts were not always successful, they probably kept the kingdom from veritable anarchy. For one thing, in sharp contrast with the frequent assassination of kings in the Arian period, only two rulers, Liuwa II (601-603) and Witteric (603-610), were murdered after the conversion of the Goths. Advancing civilization probably made the people less inclined to deeds of violence, but it is safe to say that the constant fight of the bishops against conspiracy and sedition did much to prevent regicide.

Neither were there, as far as we know, bishops in the kingdom who dared dictate to the sovereigns. There seem to have been no prophet Nathans among them; certainly none even faintly like Chrysostom, or Ambrose, or Gregory VII; nor were there prelates as courageous as those of contemporary Gaul, where among other instances Germanus of Paris excommunicated King Charibert for a sinful marriage.[102]

To blame the Church for the military weakness of the king-

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under priestly rule; cf. his "¿Fue teocratico el gobierno de la España goda?" *Historia de las instituciones sociales de la España goda*, III, 350-365.

[101] Pérez Pujol, III, 260 f. and 358; *v. supra* p. 45.

[102] For other examples, cf. O. M. Dalton, *The History of the Franks by Gregory of Tours*, I, 264-266.

dom which permitted the successful Arabic invasion is unreasonable, even though Dahn says that "the long priestly rule tamed the old warlike spirit of the first German conquerors of Rome."[103] Doubtless, the spirit of Christianity had a share in tempering barbarian ferocity, but there is no indication whatever that the Church discouraged a strong army among the Goths; it merely strove to prevent them from turning their swords upon each other in fratricidal strife. Naturally their settlement in permanent homes and their contact with civilization caused the Goths to lose much of the ardor for war which characterized them when they were a roving band living by the sword. The delights of idleness and corruption softened them. The fact that they were spread over so large a territory helped to make the mustering of an army difficult. Nevertheless, the army under Wamba met with marked success, and it should be noted that he reigned in the latter days of the kingdom.[104] The political anarchy within the kingdom in its last days seems adequate explanation for the fact that the military arm failed to keep out the Moors.

As was intimated above no one would deny that theoretically the policy of the Visigothic kings was purely Erastian. The influences of their history had given them this orientation. The subservience of the Arian Church to the civil powers, and the example of pagan Rome as perpetuated in Byzantine Erastianism taught the Gothic sovereigns their right to rule the Gothic Church. Besides the power of appointing bishops, calling councils, and approving of their acts, the kings felt that they enjoyed many other prerogatives in the Church—that they had care of matters spiritual as well as temporal. Recared voiced this opinion at the Third Council of Toledo (589). There are many little indications of this attitude noticeable in the following century. Only the king might excuse a bishop from attending a provincial council[105]; only he might excuse a newly appointed bishop from reporting to his metropolitan within three months[106]; only when the king pardoned traitors would they be admitted to communion, unless they were dying; royal laws declared penalties of excommunication just as the spiritual powers did; in certain ecclesiastical matters the king was the judge of last resort, above a metropolitan[107]; King Receswinth arranged diocesan boundaries in Lusitania[108]; King Wamba established new dioceses.[109] The bishops seldom protested against the meddling of kings in ecclesiastical matters. Isidore of Seville, whose voice carried the greatest authority among the Visigothic clergy, expressly conceded rulers certain punitive powers within the Church,[110] and the Synod of Merida recognized King Receswinth's right to dispose of ecclesiastical matters.[111] Fortunately after the conversion of the Goths the kings never interfered in matters theological. One is inclined to think that the chief reason for this lay in the fact that the troubles of the Spanish Church in the period were disciplinary rather than doctrinal; there were no bickerings in regard to heresy.

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[103] *Op. cit.*, VI^2, 218; for the other viewpoint, cf. "España," in *Enciclopedia universal,* XXI, 750.

[104] Cf. J. Tailhan, "Les Espagnols et les Wisigoths," *Revue des questions historiques,* XXX, 10-11.

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[105] Toledo III, canon 18.

[106] Toledo XII (681), canon 6.

[107] Toledo IX (655), canon 1; and XII, canon 12.

[108] Council of Merida (666), canon 8.

[109] Toledo XII, canon 4, criticizes him for this.

[110] "Principes saeculi nonnunquam intra Ecclesiam potestatis adeptae culmina tenent, ut per eamdem potestatem disciplinam ecclesiasticam muniant. Caeterum intra Ecclesiam potestates necessariae non essent, nisi ut, quod non praevalet sacerdos efficere per doctrinae sermonem, potestas hoc imperet per disciplinae terrorem.

"Saepe per regnum terrenum coeleste regnum proficit, ut qui intra Ecclesiam positi contra fidem et disciplinam ecclesiae agunt, rigore principum conterantur; ipsamque disciplinam, quam ecclesiae humilitas exercere non praevalet, cervicibus superborum potestas principalis imponat; et ut venerationem mereatur, virtute potestatis impertiat" (*Sententiae,* III, 51, 4-6).

[111] "Quoniam de secularibus sancta illi manet cura et ecclesiastica per divinam gratiam recte disponit mente intenta, sit illi opitulatrix ineffabilis omnipotentis Dei gratia, quae se quaerentibus manet propinqua" ("Praefatio," Mansi, XI, 76).

It is plain that the royal powers over the Church were *de facto* extraordinarily great. The limitations, however, which the insecurity of their throne placed on the absolutism of the kings in civil matters served to check their arbitrary control over things ecclesiastical; the danger of civil sedition made the sovereigns careful in their treatment of the bishops. Besides, as Catholic kings, the rulers maintained a wholesome respect for the spiritual power of the Church and accepted more or less seriously the idea of responsibility to God for the just administration of their kingdom. The right of appointing bishops held the greatest possibility of harm to the Church, but the kings to our knowledge were apparently conscientious and ordinarily very happy in their choice of men for the episcopacy.

In passing it may be said that if the kings had allowed the traditional choice of episcopal candidates by the clergy and the people to continue instead of arrogating the power of appointment to themselves the bishops would have been the popular representatives of their respective dioceses and their participation in civil affairs would have made the government to that extent representative of the people. Even as it was the prelates were closer to their spiritual subjects than any other associates in the government a king of the period would have chosen. We must not fail to note, too, that the national councils with bishops in attendance from all parts of Spain really were a powerful unifying and nationalizing influence in a kingdom that had little save sheer force of arms to bind it together or keep it from disintegrating.

As far as the kingdom was concerned the union between the rulers and the Church was productive of good. It seems reasonable to hold that the policy which the kings adopted in calling upon the aid of the spiritual power was the best possible for their peculiar circumstances. In fact, even as in Merovingian Gaul, the kindly influence of the Church saved the Gothic nation from falling into hopeless anarchy, from veritable suicide. True, the efforts to secure internal peace were crowned with only moderate success; there was no executive power strong enough to enforce legislative ideals, while the nobles remained ever powerful enough to thwart them. But what other institution could have done as much as the Church for the Visigothic Kingdom? Under the aegis of this union of the spiritual and temporal powers the kingdom attained a height of civilization and culture singularly advanced for the period.

CHAPTER V

THE CHURCH AND THE INTERNAL ADMINISTRATION OF THE KINGDOM

It was not alone in political matters concerning the kingship that the Church was called upon to assist the Visigothic State. The sovereigns also had recourse to the Church for help in the administration of their kingdom. The government was carried on chiefly through its judicial system. In fact the civil code was intended to be a compilation of laws for the guidance of judicial officers; its very name, *Liber iudiciorum,* is significant of this. Accordingly, the great influence of the Church on the conduct of internal affairs can be surmised from the fact that the bishops were invited by the kings to assume a very considerable rôle in the dispensing of justice. Some of the mildness of ecclesiastical law was brought into the civil courts by the bishops, and, most important of all, Christianity left a marked imprint on the civil code, which was the norm of justice in the courts.

I. *The Bishops as Judges*

When, as a result of the general disintegration of the administrative life in the Roman Empire and especially because of the coming of the barbarians, governmental machinery broke down in the provinces, much political and civil responsibility was thrown upon the bishops. Their position as spiritual heads of the *civitates* and their superior education made them the natural leaders in their respective communities. The position of responsibility thus thrust on them was not changed when a new set of masters, namely, the Teuton invaders, assumed control. The barbarian officials in order to maintain some semblance of government over the Roman provincials retained the Roman system of government, which they were unable to administer without the aid of the bishops. This was especially true in judicial matters.

The Judicial Capacity of the Bishops in the Roman Empire

From the beginning the Church had been deeply interested in the carrying out of justice. Paul had bidden the Christians to go to the Church for judgment and not to the civil courts,[1] and the ministers of the Church became the ordinary arbiters in the disputes of Christians. After the Edict of Toleration the competence of episcopal tribunals as courts of arbitration in civil matters was officially recognized by Constantine. In a constitution of 318 the Emperor decreed that if both parties in a suit consented a case might be taken out of the hands of a secular judge and transferred to the episcopal court, even though the trial had begun; he declared likewise that the sentence of an ecclesiastical court could not be appealed and was to be enforced by the civil power.[2] A second constitution, the authenticity of which, however, is challenged, gave either party the right to transfer a suit to the episcopal court.[3] Arcadius and Honorius (399), and Valentinian III (452) limited the competence of episcopal courts to religious affairs and granted only power of arbitration in civil matters when litigating parties desired it.[4]

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[1] I Corinthians, vi, 1-6.

[2] *Cod. Theod.*, I, 27, 1.

[3] *Sirmondiana* I: "Ad Ablabium" (*Theodosiani Libri XVI*, ed. Krueger-Mommsen-Meyer, Berlin, 1905, I, ii, 907-908). *V.* Leclercq, "Jurisdiction," *Dictionnaire d'archéologie chrétienne et de liturgie*, VIII, i, 473 and 479. Leclercq's article is valuable (col. 438-503), but its usefulness is unfortunately marred by inaccuracies in referring to sources. Cf. also William K. Boyd, *The Ecclesiastical Edicts of the Theodosian Code*, pp. 87-106; Pietro de Francisci, *Per la storia dell' episcopalis audientia fino alla nov. XXXV (XXXIV) di Valentino;* Duchesne, *The Early History of the Church*, II, 525.

[4] *C. Th.*, XVI, 11, 1; *Nov.* Valentiniani XXXV; cf. also a similar law of Valens, Gratian, and Valentinian (376) in *C. Th.* (XVI, 2, 23).

An important factor in the jurisdiction of ecclesiastical courts was the matter of the *privilegium fori.* In 355 Constantius forbade the trial of bishops in the secular courts; cases in which they were involved were to be examined by other bishops.[5] Theodosius II and Valentinian III annulled a law of John the Usurper which required all cases in which clerics were involved to be tried in the secular courts; they granted episcopal courts complete competence over the clergy.[6] This jurisdiction was reduced by Valentinian's law of 452 to a power of arbitration, but with the Church insisting that clerics appear only before ecclesiastical tribunals the actual status of the clergy before the law was little changed.[7] With some modifications Justinian continued this policy, placing the trial of cloistered nuns and of monks under the jurisdiction of the bishop,[8] and also the cases of lesser importance involving money matters in which clerics were concerned.[9]

In accord with previous legislation Justinian permitted litigants other than clerics to bring civil matters before ecclesiastical courts if they agreed to do so.[10] But he also gave the bishops a position in the administration of justice which they had not previously enjoyed. Hitherto episcopal jurisdiction had been really only ecclesiastical, concurrent with that of the civil courts. Justinian gave the bishops a place in the secular courts: they received appellate jurisdiction in all complaints against the regular civil judges and in cases where the civil judges were held in suspicion by litigants.[11] Besides this, Justinian encouraged the participation of the bishops in other affairs of the State. They were to supervise public works and expenditures;[12] they were given a share in the nomination of public magistrates;[13] they were made overseers of the prisons and of the magistrates in charge.[14]

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[5] *C. Th.*, XVI, 2, 12.

[6] *C. Th.*, XVI, 2, 47.

[7] Cf. Council of Chalcedon (451), canon 9.

[8] *Nov.* LXXIX.

[9] *Nov.* LXXXIII; cf. *Nov.* CXXIII, *cap.* 2; cf. Leclercq, *op. cit.*, 485.

[10] *Cod. Just.*, "De Episcopali Audientia," I, 4, 29, 4.

[11] *Nov.* LXXXVI.

[12] *Nov.* CXXVIII, 16.

Ecclesiastical Courts in the Arian Visigothic Kingdom

When the Goths settled in Gaul in the early part of the fifth century and established there the Kingdom of Toulouse they found episcopal courts enjoying jurisdiction according to the constitution of Arcadius and Honorius (399) and that of Valentinian (452): ecclesiastical affairs were cared for in the church courts; criminal cases belonged to the secular courts; but other cases might at the pleasure of the litigants be taken before the bishop.[15] The Arian Visigoths did not abolish the jurisdiction of the ecclesiastical courts; in fact, they officially acknowledged it. The *Lex Romana,* which Alaric II ordered compiled for his Roman subjects (506), retained the law of Constantius (355) which forbade the trial of bishops in the secular courts;[16] the law of Valens, Gratian, and Valentinian (376);[17] that of Arcadius and Honorius (399);[18] and that of Valentinian (452), all of which recognized only arbitration in civil matters by the episcopal courts.[19] However, the *interpretatio* after the *Novel* of Valentinian states that the Emperor Majorian had placed all cases of clerics under the jurisdiction of the episcopal courts, though this decree was no longer extant;

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[13] *Nov.* CXLIX, 1.

[14] *Cod. Just.*, I, 4, 22 and 23.

[15] Leclercq, *op. cit.*, 485.

[16] *Lex Romana Visigothorum*, XVI, 1, 2 (*C. Th.*, XVI, 2, 12). The laws of the Theodosian Code which are also found in the *Lex Romana* (*Breviarium Alaricianum*) are indicated with (*Brev.*) in the edition of the Theodosian Code cited above. Cf. also G. Haenel's edition of the *Lex Romana Visigothorum*, or Max Conrat, *Breviarium Alaricianum*, which correlates the various laws of the code under proper headings and gives a German translation as well as the Latin text.

[17] *Lex Rom.*, XVI, 1, 3 (*C. Th.*, XVI, 2, 23).

[18] *Lex Rom.*, XVI, 5, 1 (*C. Th.*, XVI, 11, 1).

[19] *Lex Rom.*, *Nov.* Val. XII (*C. Th.*, XXXV).

the *interpretatio* after the second *Novel* of Majorian indicates that it is incomplete.[20]

The synod of Agde (506), held by the bishops in Alaric's kingdom, declared a cleric excommunicated who should have recourse to a secular judge in order to escape ecclesiastical punishment, and the judge admitting him to trial was to incur the same penalty.[21] According to the same council a cleric might sue a layman before a secular judge only with the permission of his bishop, though a cleric might defend himself in a secular court.[22] A layman falsely accusing a cleric was to incur excommunication.[23]

It is evident that ecclesiastical courts in the Gothic Kingdom were actually called upon to arbitrate civil cases, for we find the Synod of Tarragona (516) decreeing that bishops, presbyters, or clerics should not sit in judgment on Sundays. On other days they might settle quarrels, criminal cases excepted.[24] Perhaps a reason for the popularity of ecclesiastical courts becomes apparent when the same council is found forbidding a cleric to take presents, "as secular judges do," for his judicial work, except what as a free-will offering is brought into the church. That trafficking in justice was a current evil in the secular courts of the Visigothic Kingdom appears from the fact that King Theudis in 546 made an attempt to prevent judges and officials from using their office as a means of enriching themselves at the expense of parties requiring their service.[25]

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[20] Cf. Conrat, *Breviarium Alaricianum*, p. 472, note 2; Boyd, *The Ecclesiastical Edicts of the Theodosian Code*, p. 96.

[21] Canon 8.

[22] Cf. also Synod of Epaon (517), canon 11.

[23] Cf. also Synod of Elvira (*ca*, 306), canon 75.

[24] Canon 4.

[25] *V.* fragment: "Lex Theudi Regis de litium expensis et commodis judicum et executorum," in K. Zeumer's *Leges Visigothorum*, pp. 467-469; also his: "Das Processkostengesetz des Königs Theudis vom 24 November 546," *N. Arch.*, XXIII, 77-102. The law actually legalized bribery, but sought to regulate it.

Episcopal Supervision of Civil Magistrates under the Early Catholic Kings

With the conversion of the Goths to Catholicism and the convening of the national councils the Church in Spain was entrusted with supervision of the administration of justice. The Third Council of Toledo (589) at the request of King Recared placed the direction of civil judges and stewards of the fiscal estates (*actores fiscalium patrimoniorum*) in the hands of the councils.[26] On the first of November of each year these officials were to meet with the provincial council of their district, there to learn how to treat the people kindly and justly, and not to burden them with transportation services (*angariae*), or other public works. The bishops were likewise to oversee the work of the judges, warning and correcting them, or reporting violence to the king, even excommunicating those who should fail to amend. It was the duty of the bishop to decide with the *seniores* what the province (diocesan district presumably, i. e., the *civitas*) should, without detriment to itself, pay the judges. The idea of making the bishops the protectors of the weak was not new in Spain. The First Council of Toledo (400) decreed that if a powerful personage despoiled a cleric, a poorer man, or a monk and refused to make restitution at the command of the bishop, he was to be excommunicated by all the bishops of the province and all others to whom word could be sent until he restored the goods.[27] In Gaul the Second Council of Tours (567) decreed that if judges or powerful persons (*potentes*) who oppressed the people failed to amend when warned by the bishops they were to be excommunicated.[28] King Chlotar II (584-628) ordered that if a judge made an unjust decision in the absence of the king the bishop was to punish him and cause the decision to be changed.[29]

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[26] Canon 18.

[27] Canon 11.

[28] Canon 27. On ecclesiastical courts in Gaul, *v.* Leclercq, *op. cit.*, 485 ff., and Dalton, *The History of the Franks by Gregory of Tours*, I, 264-313.

Dahn sees in this legislation of the Third Council of Toledo a portentous recognition of the supremacy of the crozier over the civil officials. It was indeed a great power, but it was not wrested from an unwilling sovereign by bishops lustful of supremacy; neither was it granted by a king who catered to the Church because he felt insecure on the throne; it came from the powerful Recared, who, consulting the best interest of his subjects, felt that the clemency, justice, and legal skill of the bishops would form the best guarantee of good administration. Evidently the civil officials had failed to measure up to the degree of integrity sought by the king. In keeping with the conciliar decree Recared incorporated a law into the civil code in which he forbade officials to oppress the people for personal benefit or to accept bribes; in its conclusion he conjured bishops, under pain of judgment by a council and reparation of the damages sustained by the oppressed people, to report to him the wrongdoings of judges or royal agents. This law was retained by Receswinth and Erwig in their revisions of the code.[30] The Fourth Council (633) again urged the bishops not to neglect the duty *placed on them by God* of protecting and defending the people.[31] Hence when they saw judges or magistrates oppressing the people (*pauperes*) they were to admonish them; if the admonition proved inefficacious, the matter was to be referred to the king *"ut quos sacerdotalis admonitio non flectit ad iustitiam regalis potestas ab improbitate coerceat."* A bishop neglecting this duty was accountable to the council (*reus concilio erit*). The civil code reflects from beginning to end the struggle of the kings with the venality and rapacity of judges and their attempts to thwart the administration of justice.[32]

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[29] "Chlotharii II praeceptio," *Capitularia regum Francorum,* I, 19, no. 6 (ed. by A. Boretius, MGH, *Legum* sectio II, t. I).

[30] *Leg. Vis.,* XII, 1, 2.

[31] Canon 32.

Probably the secular officials did not comply with the decree of the Third Council of Toledo which placed on them the rather humiliating obligation of going before the provincial councils for instructions;[33] in this period the Second Synod of Seville (613) alone speaks of the presence of laymen, and it mentions only two. The Fourth Council of Toledo (633), though passing legislation in the same vein, seems to infer that the magistrates were failing to appear before the councils in accordance with the previous decree. Instead of bringing officials before the provincial councils for instructions it ordered them arraigned before these bodies when they were under accusation.[34] The decree was in favor of the oppressed. All those who had cases against bishops, judges, nobles (*potentes*), or other persons, were to have recourse to the provincial council, and, if examination revealed the fact that injustice had been done, restitution was to be ordered by the synod and enforced by a royal *executor;* the metropolitan could likewise obtain an *executor* from the king to compel judges or lay persons to appear before a council. Whether, in case the provincial council could not settle them, such cases were to go before a national council as a court of higher instance, the sources do not clearly indicate.[35]

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[32] *Leg. Vis.*, V, 7, 8, forbade a judge to take a bribe when deciding on the free or servile condition of anyone; VI, 1, 2, strove to prevent judges from accepting bribes to torture a defendant to death; XII, 3, 25, endeavored to stop officials from taking bribes from Jews who sought exemption from the laws against them; II, 4, 6, and III, 4, 13, forbade the bribery of witnesses; IX, 2, 1, and 3, and 5, forbade army officers to accept bribes to free men from military service; II, 1, 20, was aimed at judges who refused to try a case out of favor to the defendant or decided it fraudulently; cf. also II, 1, 21; II, 1, 22; II, 1, 30; VI, 1, 5, etc., etc. There are many laws, too, which show that powerful personages contemned the courts, refusing to appear for trial, keeping the guilty from justice, administering their own justice, interfering in court procedure: cf. II, 1, 19; VII, 4, 2; VII, 2, 22; VIII, 1, 2; II, 2, 8, etc.

[33] Cf. Pérez Pujol, *Historia de las instituciones sociales de la España goda,* III, 340-341.

[34] Canon 3.

The Judicial Competence of the National Councils

Our information about the judicial powers of the national councils is very vague. They did of course have and use jurisdiction in matters ecclesiastical.[36] Dahn and Magnin think that these councils became the courts for political offenders both clerical and lay; Pérez Pujol denies this.[37] The Fourth Council of Toledo (633) did decree that bishops conspiring with foreign powers were to be punished by a council, but it did not specify how they were to be tried,[38] and the Sixteenth Council (693) actually imposed the penalty on the traitorous Bishop Sisbert, but it inferred that his guilt had been previously established.[39] The decree of the Thirteenth Council (683) that no palatine or cleric accused of political offences was to be punished without trial *"in publica sacerdotum seniorum atque etiam gardingorum discussione"* does not necessarily imply that a national council was to be summoned;[40] it seems something very like a demand for trial by peers. Yet that the Councils of Toledo did exercise judicial functions in cases other than those which were purely ecclesiastical would appear from the documents addressed by the kings to the Thirteenth, Fifteenth, and Sixteenth Councils, in which the bishops and palatines were urged to render just judgments. It must be conceded that the *tomus* presented to the Sixteenth Council when compared with the tenth canon of the same synod offers reason for thinking that the council enjoyed the right to judge in cases of treason.[41]

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[35] Pérez Pujol, III, 323.

[36] Pérez Pujol, III, 320-321.

[37] Dahn, *Die Könige der Germanen*, VI², 327 and 428; Magnin, *L'Église wisigothique*, I, 80; Pérez Pujol, *op. cit.*, III, 323-324.

[38] Canon 30.

[39] Canon 9.

[40] Canon 2; *v.* the *tomus* addressed to the same council suggesting this legislation (Zeumer, *Leges Visigothorum*, p. 478).

The only concrete instance recorded as being referred to a council was one of oppression. King Egica brought before the Sixteenth Council the case of the Spatharius Theudemud, who had been constrained by Wamba to exercise an odious office.[42] It seems probable, then, that other cases of oppression could be brought before the national councils. The manner in which complaints were to be admitted was laid down in the general regulations for holding provincial synods.[43] We have little or no evidence as to the number or character of the cases or of the procedure which was followed when the councils sat as judicial bodies. These cases may well have been in part the reason which made the Seventeenth Council of Toledo exclude secular business for the first three days of a synod.[44]

The Jurisdiction of the Bishops in the Civil Courts

King Chindaswinth (642-653), who as the code abundantly testifies was deeply interested in the reform of the courts, went much further than did his predecessors or the councils in connecting the bishops with the civil judiciary. He decreed that if a civil judge of any rank whatever (even a *dux*) was held in suspicion by a party in a suit the case was to be heard before the judge sitting with the bishop, and both judge and bishop were to commit their decision to writing. Even after this an appeal to the king was still open to the complainant, though only *in devolutivum,* not *in suspensivum,* and if it was discovered that the bishop and judge had decided unjustly the complainant's property was to be restored and the judges were to pay him an equal additional sum as penalty for their unrighteous decision. However, the appeal was to be made at the complainant's peril: if the court's judgment was sustained he was to pay the same penalty which his judges would have suffered or was to be beaten with the lash.[45]

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[41] The *tomus* orders: "*Varia quoque populorum negotia ceteraque sceleratorum hominum gesta fidei sanctae contraria ita vestri examinatione iudicii canonice ac legaliter finiantur, ut nec iustitia praetereat nec severitas legum ex omnibus intercurrat*" (Mansi, XII, 63; Zeumer, *op. cit.*, p. 483); and the canon after deprecating the continued existence of sedition in the kingdom re-enacts punishments for it, employing the same phrase in regard to the trial of traitors which the king used in the *tomus* when he exhorted the council to judge their cases justly: "*canonice legaliterque*" (cf. Mansi, XII, 78).

[42] *V.* a document addressed to this council by Egica: Mansi, XII, 83-84.

[43] Toledo IV (633), canon 4; cf. *supra*, p. 42.

[44] Canon 1.

Receswinth taking up this same matter added that if the judge refused to listen to the bishop the latter could himself decide, and if the judge (*comes*) refused to enforce this decision he was to pay a fine to the bishop; if the bishop conspired with the judge to delay a trial he too was to pay a fine to the person suffering and justice was to be rendered.[46] Erwig's revision of this law provided for a hearing before the bishop and judge according to Chindaswinth's legislation,[47] and then made the addition of Receswinth concerning a decision of the bishop alone, if the judge proved intractable; however, instead of having this decision at once executed Erwig ordered the new verdict with explanation of its divergence from the original sentence of the judge sent to the king for approval.[48] This legislation was without doubt modelled after *Novel* LXXXVI of Justinian, which gave the bishops civil jurisdiction.[49]

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[45] *Leg. Vis.*, II, 1, 24. Cf. a further law of Chindaswinth (II, 1, 31), which provides for appeal from a lower judge to the court of the *comes*, and by inference, to the bishop (according to the provisions of II, 1, 24), unless the king should appoint a special commission to hear the appeal.

[46] *Leg. Vis.*, II, 1, 30 (Receswinth).

[47] II, 1, 24.

[48] These laws are presented with great care by Zeumer, "Geschichte d. westgoth. Gesetzgeb. II," *N. Arch.*, XXIV, 79-84.

[49] *V. supra*, p. 75 and p. 136; cf. Zeumer, *op. cit.*, pp. 84-86. The chief difference lies in the fact that Justinian permitted the appeal to the bishop

It is noteworthy that this legislation which made the bishops civil judges of appeal was first promulgated by Chindaswinth, who ruled very much as he wished and certainly was not unduly subservient to the spiritual lords. It cannot be said that the machinations of the Church brought this power to the bishops. Coming from a powerful sovereign like Chindaswinth this policy clearly reflects the high opinion he had of the character of the prelates. Their intrigue consisted only in their making themselves indispensable to the State by their moral superiority over the civil magistrates. It is important to note, too, that these laws were enacted especially in behalf of the *pauperes,* i. e., of such as were not *potentes.*[50] It was the Church that was called upon to safeguard the common man from oppression.

II. *The Effects of Church Influence on Law and Administration*

Gothic Harshness Softened

The general influence of the Church on the administration was in favor of humaneness and mildness; it strove to temper the ruthless barbarity of the Goths. Canon seventy-five of the Fourth Council of Toledo, while striving to strengthen the position of the kings, cautions them to rule justly and moderately, and not to decide arbitrarily in cases of capital punishment or confiscation. The right to trial was insisted on by the councils. No one was to be punished merely upon accusation without inquest.[51] This had not been heeded under Chindaswinth and under Wamba, when political offences had received summary punishment. Accordingly the Thirteenth Council

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from a suspected judge only before the case began, whereas the Visigothic legislation permitted the appeal at any stage in the process.

[50] Not the poor, but the rank and file of the population (Zeumer, *op. cit.*, p. 81).

[51] Toledo VI (638), canon 1.

(683), as was noted before, secured for bishops and palatines the right of trial in the presence of peers (perhaps by a council); in regard to other free persons the king was suffered to retain the right of flogging for some misdemeanors, but for political offences they too were to be granted a trial. Perhaps one reason why this assertion of rights was made principally in favor of the higher class was that these people had been the chief sufferers at the hands of the kings.[52]

Church law followed ecclesiastics into the civil courts when they were called upon to preside there and lent a characteristic touch of mildness. Bishops could accept judiciary powers from the king (apparently granted in cases of lèse majesté) only on condition that the latter swear not to resort to capital punishment should guilt be found; otherwise the bishops, involved in the shedding of blood, would lose their rank.[53] In the same vein clerics were forbidden to pronounce sentence of death or mutilation under penalty of degradation, imprisonment, and denial of communion.[54]

The right of sanctuary was insisted on by the Church and acknowledged by the civil law, but was so regulated that the claims of justice were not neutralized. The civil laws were greatly like those of the Theodosian Code in this matter.[55] There are four laws in the code, all of them *Antiquae,* devoted expressly to asylum. A person seeking sanctuary forfeited his privilege if he did not lay down his arms. Removing a slave or debtor by force from asylum was subject to a fine, payable to the church injured, or public flogging. A debtor was to be restored by the church of sanctuary to his creditor on the promise of the latter that he would not imprison him or put him to death, and definite terms were to be made in regard to the payment of the debt.[56] According to the Sixth Council of Toledo (638) traitors who availed themselves of the privilege were, because of the sanctity of the place and through the intercession of the bishops, to receive justice from the king, but justice tempered with mercy.[57] Chindaswinth in a revision of an old law decreed that if a murderer fled to sanctuary he was to be released by a priest in charge on the promise of the pursuer not to inflict capital punishment; the culprit's eyes might, however, be put out. Erwig omitted this specific concession to barbarity in his wording of this law and ordered the criminal handed over to the relatives of his victim for punishment in any way short of death.[58]

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[52] Toledo XIII, canon 2; this was incorporated into the civil code by Erwig: XII, 1, 3.

[53] Toledo IV, canon 31.

[54] Toledo XI (675), canon 6.

[55] Cf. Zeumer, *Leges Visigothorum,* pp. 379-380, notes. *V.* law on asylum in the *Lex Romana,* IX, 34, 1 (*C. Th.,* X, 45, 4).

Chindaswinth prohibited legal business on Sundays and church festivals including fifteen days at Paschal time.[59] This law, based on religious motives, naturally operated in favor of the weaker members of society.

Similarly the harshness of ecclesiastical superiors was moderated. The Third Council of Toledo (589) forbade bishops to exact more in the way of dues from the clergy than the old constitutions allowed.[60] The next national council (633) cautioned bishops not to take advantage of the monks in the monasteries within their territories by treating them as slaves.[61] The Synods of Merida (666), Braga, and Toledo XI (both 675) reflect great deterioration of ecclesiastical discipline. Barbarism had triumphed to some extent; its imprint at least had been left upon the Spanish Church, so that it was deemed necessary to forbid bishops to have the slaves of the Church maimed for any wrongdoing. Their offences were first to be submitted to a civil judge for inquest and condign punishment;

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[56] *Leg. Vis.*, IX, 3, 1-4.

[57] Canon 12.

[58] *Leg. Vis.*, VI, 5, 16; cf. also, VI, 5, 18.

[59] *Leg. Vis.*, II, 1, 12; cf. *Lex Rom. Vis.* (*C. Th.*), II, 8, 2, *Int.*

[60] Canon 20.

[61] Toledo IV, canon 51.

guilt established, the bishops might punish with moderation befitting their office. Priests falling sick were not to torture their slaves on the supposition that they had caused the malady by the use of magic. In case of such accusation the matter was, at the request of the bishop, to be submitted to a civil judge for investigation; if he found guilt, the bishop was to decide on the punishment.[62] The Eleventh Council of Toledo deprecated the fact that bishops should anticipate court decisions and take the law into their own hands. Those who in pursuing this lawless policy should become guilty of crimes of violence, injustice, or homicide were not to escape punishment. If they had property they were to pay the penalties prescribed by the civil law, to which the council added an excommunication of two weeks; if they lacked personal property they were not to be sold as slaves (as would be the case with insolvent laymen), but they were to be punished by twenty days of penance for each ten *solidi* of compensation which they owed. Slaves of the Church involved in such crimes were to be turned over to the secular law for punishment. According to the same canon bishops who should be guilty of carnal sins with noblewomen, or of homicide, or other injury to members of the nobility for which the civil law ordered a talion penalty or proscription, were to be exiled, degraded, and excommunicated; they might receive communion only in preparation for death.[63] A bishop was forbidden to punish his subjects by arbitrary or secret judgment, but was to discipline them publicly or have recourse to a tribunal of two or three of the spiritual brothers of the accused; if exile was decided upon as a penalty the bishop was to sign the sentence with his own hand.[64] Priests, abbots, and levites were not to be punished by the lash except for grave and mortal delicts. Any bishop violating this law was to be excommunicated and exiled.[65]

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[62] Merida, canon 15.

[63] Canon 5. This carelessly constructed piece of legislation perhaps was framed to meet certain definite cases.

[64] Toledo XI, canon 7.

[65] Braga, canon 7.

The Influence of Christian Morality on the Civil Code

Many provisions in the laws concerning morality, family life, and the position of women in Gothic Spain are to be traced to Christianity. In many instances Christian influence had already been brought to bear on the Roman law taken over by the Visigoths. Thus among other things the Christian Emperors had greatly modified the harsh Roman system of the *patria potestas* in favor of the children and their mother.[66] This carried over into Visigothic legislation.

There is much insistence in the Visigothic civil code on female virtue, but these laws fall short of being quite Christian in spirit. Their source is sometimes Germanic, more often Roman. Most of them were framed in the period before the conversion. Adultery of the wife or betrothed maiden was inexorably punished.[67] An unfaithful wife was turned over to the wrath of her outraged husband. The adulterer was touched by the law only because of his offence to an injured husband. The Catholic kings did not change this double standard. Chindaswinth carried the protection of the family honor in the virtue of the wife and mother to unprecedented lengths. If the husband neglected to accuse the adulteress the duty fell upon the sons; these failing, it devolved upon the relatives of the husband. If the accusation was proved the accusers were to be rewarded with the property of the erring woman and, according to an emendation by Erwig, with the possession of her and her paramour. The crudeness involved in giving a mother into the hands of her sons was recognized and changed in some manuscripts of the code.[68] In the event that the relatives proved remiss in accusing such a woman the king was empowered to appoint and reward a prosecutor.[69]

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[66] Cf. Troplong, *De l'influence du christianisme sur le droit civil des Romains*, pp. 180-226.

[67] Cf. *Leg. Vis.*, III, 4, 1 ff.

[68] Cf. Zeumer, *N. Arch.*, XXIV, 612.

[69] *Leg. Vis.*, III, 4, 13.

There was copious legislation against abduction and rape, crimes to which Visigothic violence probably inclined.[70] Violation of a free maiden or widow was punished by enslavement for a freeman and death for a slave.[71] A law, probably emanating from Leovigild,[72] punished prostitutes with the lash and, in case or relapse, with enslavement. Parents or masters who permitted women in their charge to become prostitutes were likewise to be beaten.[73]

Even in the code framed by King Euric there was a law, based on the model of Roman legislation, forbidding marriages to the fourth degree of relationship as incestuous.[74] But since the Church forbade unions to the sixth degree (in the computation according to Roman law), the civil law in the Catholic period was made to agree, and parties marrying in violation of the law were to be separated and sent to monasteries according to their sex for perpetual penance.[75]

The Catholic kings Chindaswinth and Egica legislated against paederasty,[76] the latter referring in his law to similar legislation on the part of one of the councils.[77] The Third Council of Toledo reproached parents guilty of infanticide for their unnatural crime as being against the primary purpose of their union and stated King Recared's order that the vicious practice should be sought out and punished by civil judges as well as bishops.[78] Several early civil laws had struck severely at the crime of abortion,[79] but Chindaswinth found it necessary to introduce more drastic legislation for the protection of infant life both before and after birth. His indignation at this crime of parents has a Christian ring to it, as does also his failure to distinguish between slave and free parents in the sanction attached. The option left with the judge of blinding a guilty person instead of pronouncing death sentence is, of course, barbaric.[80]

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[70] *Leg. Vis.*, III, 3, 1-12.

[71] *Leg. Vis.*, III, 4, 14.

[72] Cf. Zeumer, *N. Arch.*, XXIV, 613.

[73] *Leg. Vis.*, III, 4, 17.

[74] Cf. Zeumer, "Zwei westgothische Gesetze," *N. Arch.*, XXIII, 104 ff.

[75] *Leg. Vis.*, III, 5, 1 (Chindaswinth). Cf. Zeumer, *op. cit.*, pp. 110-111; and *N. Arch.*, XXIV, 613-616.

[76] *Leg. Vis.*, III, 5, 5 and 6.

[77] Cf. Toledo XVI, canon 3; cf. Zeumer, *N. Arch.*, 618-619.

[78] Canon 17; cf. Elvira (306?), canons 63 and 68; and Lerida (524), canon 2, for earlier legislation in this matter.

[79] *Leg. Vis.*, VI, 3, 1-6.

The same co-operation between the ecclesiastical and civil power is to be found in conciliar legislation authorized by the kings which placed on bishops and judges the obligation of extirpating paganism and idolatry.[81] Civil as well as ecclesiastical power was invoked to stop dances on feast-days which disturbed divine services and kept people from attending them.[82]

The right of girls and widows not vowed to God to marry or not as they chose, and to marry whom they chose was protected by the Third Council of Toledo with the consent of Recared. This law was primarily directed against any supposed right of the king to dispose of the hand of his female subjects.[83] It did not infringe upon the right, recognized by the civil code, of parents or brothers to secure for a girl a worthy husband, especially one who could furnish the proper dowry.[84] This fine freedom guaranteed to women by the council was later infringed upon by Chindaswinth when he gave the wives and daughters of rebel nobles to his followers.[85] The same ruler also incorporated into the civil code clauses which imply this arrogation of royal power.[86]

The right of a widow to act as guardian over her children was taken over by the Visigoths from Christian Roman law, though this acknowledgment of the mother's authority was according to the Teutonic spirit.[87] A law of King Euric granted women the right to appear in court on matters concerning themselves, though they might not represent other persons there. Without a mandate even a husband was not to act in court for his wife; unless she had given her delegation she might repudiate the decision of the judge. This regulation was also taken from Roman law.[88]

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[80] *Leg. Vis.*, VI, 3, 7.

[81] Toledo III (589), canon 16; Toledo XVI (693), canon 2; cf. Toledo XII (681), canon 11.

[82] Toledo III, canon 23.

[83] Canon 10. Cf. Dahn, *Die Könige der Germanen*, VI^2, 449-450; Zeumer, *N. Arch.*, XXIV, 605.

[84] Cf. *Leg. Vis.*, III, 1, 2; 7; 8.

[85] *Chronicarum quae dicuntur Fredegarii libri*, IV, 82.

[86] *Leg. Vis.*, III, 3, 11; III, 5, 1; cf. Erwig's addition to III, 2, 1.

The question of divorce in the Gothic kingdom is very involved and the evidence quite meager. The *Lex Romana Visigothorum* permitted a husband to divorce his wife if adultery, poisoning, or pandering was proved against her.[89] The Council of Agde (506) decreed excommunication against men who dismissed their wives without waiting for them to be tried before a court of the provincial bishops.[90] In the *Leges Visigothorum* there are two laws concerning divorce, one dating from before the conversion, the second framed by Chindaswinth.[91] The latter undoubtedly displaced an earlier law.[92] According to the first of these extant laws no one might marry a divorced freeborn woman unless she could offer proof of her divorce by documents or witnesses, unless she had been granted a divorce in court, or unless her husband had already married again.[93] As penalty for breach of this law the woman and the man who attempted to marry her were handed over to her husband. If a husband unjustly left his wife he was to lose the dowry he had given her and was obliged to return any property of hers which he held. The second law forbade divorce to husbands save only for the supposed exception mentioned in the gospel according to St. Matthew.[94] An adulterous wife if convicted in court was to be handed over to her husband for punishment. The law permitted a wife to divorce a husband guilty of paederasty, or one who gave her into adultery against her will, and under such circumstances it expressly permitted her to remarry. It decried these offences of the husband as crimes that should never occur among Christians.

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[87] *Leg. Vis.*, IV, 3, 3; *C. Th.*, III, 17, 4. Cf. Troplong, *op. cit.*, p. 219; Zeumer, *N. Arch.*, XXVI, 135.

[88] *Leg. Vis.*, II, 3, 6; cf. *C. Th.*, IX, 1, 2; Pauli *Sent.*, I, 2, 2; *C. Just.*, II, 12, 21; *v. N. Arch.*, XXIV, 96-97.

[89] *Leg. Rom. Vis.* (*C. Th.*), III, 16, 1. For the changes which the Christian Emperors had made in the Roman law of divorce cf. Troplong, *op. cit.*, pp. 146-162.

[90] Canon 25.

[91] *Leg. Vis.*, III, 6, 1 and 2.

[92] Cf. Zeumer, *N. Arch.*, XXIV, 626.

[93] Cf. *ibid.*, p. 624.

Zeumer insists that divorce by mutual agreement was allowed by this law. He bases his argument on the fact that the law explicitly forbade the husband to obtain documents of divorce from his wife by cunning or force, or without further ado to take another wife. He infers from this prohibition that if the wife agreed voluntarily the divorce was legal. He maintains that the sweeping prohibition of divorce at the beginning of the law must be interpreted according to this context. However, he does admit the possibility that the law was modelled in part after a law of Justinian, which forbade divorce by consent of the parties, unless they entered religion.[95] Chindaswinth's law provided for separation by mutual consent, attested to before the bishop, if one party intended to enter religion, but it forbade the party staying in the world to remarry. Zeumer sees in this merely a means of preventing a scheming person from persuading a conjugal partner to enter religion so that he might be free to marry again.[96] Accordingly he repudiates as inapplicable the argument that if a person whose consort had with his consent entered religion might not marry again, *a fortiori* no other pact between husband and wife could permit another marriage.

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[94] Matt., v, 32. Chindaswinth ordained: " . . . ut nullus virorum, excepta manifesta fornicationis causa, uxorem suam aliquando relinquat et neque per testem neque per scripturam seu sub quocumque argumento facere divortium inter se et suam coniugem audeat" (III, 6, 2).

[95] *Nov.* CXVII. Cf. *N. Arch.*, XXIV, 627.

[96] *Ibid.*, pp. 628-629; cf. *Leg. Vis.*, III, 6, 3, which forbade those betrothed to break their engagement without mutual consent for sake of entering religion lest there be trickery back of their apparent devotion.

With due respect for Zeumer's scrupulous treatment of the laws we must maintain that his opinion in this case is scarcely convincing. It seems that Chindaswinth was attempting to state the Christian position in regard to divorce: hence his reference to the text of Matthew. When he forbade husbands to marry again on the plea of divorce papers obtained by force or fraud from their wives he perhaps did so because previously documents had been all-important in establishing a right to remarry, and men would cling to their use in attempts to justify remarriage.[97] If according to the new law mutual consent was no longer legal ground for divorce, papers could be obtained from a wife only as a sort of trickery at best. It is vain to expect perfect logic in the framing of the law; the *Liber iudiciorum* is not conspicuous for that. It is true that the earlier divorce law[98] remained in the code, but several manuscripts omit the clause permitting a woman to remarry if she could show divorce papers, though they leave other less obvious references to remarriage in the law untouched. Zeumer thinks this omission was made probably in the revision of the code by Erwig in 681. Perhaps it was made before. Certainly, if divorce by mutual consent was permitted by Chindaswinth this interpretation of his law ceased soon afterward. The Twelfth Council of Toledo (681) forbade a man under pain of excommunication to dismiss his wife except for adultery; if he refused to take her back he was to be deposed from palatine dignity and to lose the right of testimony.[99] A further indication that Chindaswinth in drafting his divorce law conformed to a will other than his own appears in the fact that he denied women the privilege of divorce even by favor of the king. In view of his arrogance mentioned above in disposing of the hand of his female subjects this seems a concession to morality on his part and to the will of the Church. If the Church did influence the framing of this law it seems quite evident that divorce by mutual consent was not permitted. It can be safely asserted that Christian ideals had been rather completely realized in regard to the indissolubility of the marriage bond, not only in the conciliar but even in the civil law of Spain—in the latter probably as early as Chindaswinth, but at least by the reign of Erwig.

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[97] Cf. *Leg. Vis.*, III, 6, 1.

[98] *Leg. Vis.*, III, 6, 1.

[99] Canon 8.

Ecclesiastical and Civil Laws on Clerical Celibacy and Religious Chastity

Church and State combined to compel the clergy in higher orders to the observance of celibacy, to protect the chastity of religious women, and to prevent religious from returning to the world. The Council of Elvira (*ca.* 306) took a step in the direction of a law of clerical celibacy by demanding continence of married clergymen at the time they engaged in clerical ministrations. By the time of the First Synod of Toledo (400) the law of celibacy was in force at least for bishops, priests, and deacons. The Third Council of Toledo (589) ordered the married clergy converted from Arianism to give up their wives or be satisfied with the rank of lector.[100] Only the closest female relatives were allowed in the houses of the clergy; other women whose presence caused suspicion were to be sold into slavery and the clerics living with them properly punished.[101] Minor clerics were forbidden to marry widows, divorced women, or courtesans.[102] The Eighth Council of Toledo (653) in legislating against the incontinence of priests and deacons ordered that their female companions be sent to convents so that they might be kept from all association with these clergymen. If the clerics would not be corrected they were to be sent to monasteries for lifelong penance.[103] Subdeacons were also bound to celibacy.[104] The spurious children of clergymen were declared incapable of inheritance and were made slaves of the church which their father served.[105] King Receswinth confirmed this discipline of clerical celibacy by introducing it into the *Liber iudiciorum* (654). Clergymen in higher orders were forbidden to cohabit with women. Bishops and judges were obliged to break up such unions and punish guilty clerics according to the canons. If a bishop neglected his duty in this regard he was to pay a fine of two pounds of gold to the *fiscus* and hasten to discharge his duty. If he could not correct the evil he was to appeal to a council or the king. The women involved were to be punished with a hundred lashes—a penalty peculiar to Gothic law and not included in the conciliar decree—and otherwise dealt with according to the provisions of the Eighth Council.[106]

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[100] Canon 5.

[101] *Loc. cit.;* cf. Toledo IV (633), canon 43. The Second Council of Toledo (531) had degraded and excommunicated such clergymen (canon 3). The Council of Lerida (524) deposed them from office till they reformed (canon 15).

[102] Toledo IV, canon 44; cf. Tarragona (516), canon 9.

There is record of an actual infringement of this discipline dealt with by the Tenth Council of Toledo (656) at a secret session of the bishops. Archbishop Potamius of Braga confessed himself guilty of incontinence, for which he had of his own accord already given up his see. In consideration of his confession he was not degraded, but was condemned to penance for life.[107]

The chastity of virgins, widows, and penitents vowed to God was protected by King Recared in the civil code as well as by the ecclesiastical canons. He forbade marriage with these women, even though they consented. Such attempts at marriage he placed on a par with incest, since in the same law incestuous unions were denounced and punished in the same manner. The penalties were exile and forfeiture of property to the heirs.

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[103] Canon 5. MSS readings of this canon differ; it is possible that the law retained the old discipline and sold such women into slavery.

[104] Canon 6. The Second Council of Toledo (531) had already required this.

[105] Toledo IX (655), canon 10.

[106] *Leg. Vis.*, III, 4, 18.

[107] Mansi, XI, 40-41. Cf. Toledo XI (675), canon 5.

Enforcement of the law was committed to bishops (*sacerdotes*) and judges under penalty; aid necessary in securing its observance was to be obtained from the king.[108]

The many canons which endeavored to prevent men or women who had assumed religious vows from returning to the world or marrying were confirmed by civil law. Chindaswinth ordered apostates from religious life or the state of penance confined to their monasteries and subjected to strict penance; he took from them their right to testify in court, because they could not be trusted in secular matters if they proved unfaithful to their holy calling; he gave their property to their heirs. Even those who had been introduced into monastic life as children by their parents were bound by the provisions of this law. Chindaswinth expressly excluded from the obligations of the law any person on whom the discipline of penance was imposed while he was unconscious, unless he had previously asked for it. This provision was later disregarded by the Twelfth Council of Toledo in dealing with the case of Wamba and contradicted by its second canon.[109]

To prevent widows from assuming religious garb and subsequently returning to the world the Tenth Council (656) decreed that they might adopt such dress only after declaring in writing their intention of assuming it for life, and they were to receive it at the hands of a priest. The canon explicitly ordered that the garb was not to have bright colors.[110] Evidently the decree failed in its effect, for King Egica found it necessary to take up the matter again. Some widows in donning religious habits strove to retain their right to lead a secular life by adding to their habit bright-colored stripes, which they kept concealed. Thus they might argue that they had never actually assumed religious garb. Egica condemned such hypocrisy and declared that the external appearance of their dress determined their status.[111] It is interesting to note that in the discipline concerning clerical celibacy and the religious life the legislation of the councils took on a rigor which it scarcely would have exhibited had not Church and State been so closely connected.

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[108] *Leg. Vis.*, III, 5, 2; cf. Toledo I (400), canon 16; Lerida (524), canon 6; Toledo III (589), canon 10; Barcelona II (599), canon 4. The punishment attached to this offence by the *Lex Romana Visigothorum* (IX, 20; *C. Th.*, IX, 25) had been death. Since the law was addressed to all the subjects of the kingdom, it meant a mitigation for the Romans.

[109] *Leg. Vis.*, III, 5, 3; cf. Toledo IV, canons 49, 52, 55, 56; Toledo VI, canons 6 and 7; etc.

[110] Canon 4.

Religious Spirit in Civil Laws

Many of the civil laws borrowed motives from religion and contained religious argumentation. Thus Chindaswinth provided that inheritance rights could be established through a child which lived at least ten days and had been *baptized.*[112] Recceswinth in attempting to explain the propriety of this ruling framed a *capitulum* (probably intended merely as an introduction to Chindaswinth's law) in which amid verbose and naïve argumentation he made references to life in the next world.[113] As a motive for legislating to protect wards against the fraud of their guardians Recceswinth gave the hope of a heavenly reward: "*ut melioris mercedis partem nostra clementia consequatur.*"[114] It is significant that even a *Lex antiqua* in its solicitude for orphaned minors provided that an inventory of the father's property be left with a bishop or priest.[115]

The part that religious motives played in the amelioration of slave conditions in the Visigothic Kingdom will be pointed out in the next chapter. There also the treatment accorded the Jews in the Peninsula will be discussed, but it may be noted here that conciliar and royal legislation both dealt with the Jews, and the bishops were to a very considerable extent entrusted with the enforcement of civil laws concerning them. King Recceswinth in language seldom found from the time of the Donatists to the

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[111] *Leg. Vis.*, III, 5, 6.

[112] *Leg. Vis.*, IV, 2, 18.

[113] *Leg. Vis.*, IV, 2, 17.

[114] *Leg. Vis.*, IV, 3, 4.

[115] *Leg. Vis.*, IV, 3, 3.

Puritans began the *titulus* containing his anti-Jewish legislation with a sermon. In it he proclaimed his devotion to God and the Church and his intention of restraining the excesses of his people with godly laws to the end that the divine blessing might rest on the kingdom.[116] In the succeeding law he struck at all manner of heresy. His legislation against the Jews as well as that of other kings is frequently reinforced with religious arguments and scriptural texts.

The *Liber iudiciorum* contained several enactments against divination and magic. King Chindaswinth (642-653) forbade anyone to consult with soothsayers concerning the death of the king or another person under penalty of scourging, confiscation, and enslavement. He decreed that magicians and enchanters doing harm to persons or property, or offering sacrifice to the devil were to be punished and confined. His legislation was modelled after law contained in the *Lex Romana Visigothorum,* but he did not retain the death penalty which the Roman codification attached to these offences.[117] King Erwig (680-687) in forbidding all recourse to diviners touched upon the theology of the matter and declared such consultation a seeking of the truth from the devil, himself a liar from the beginning, whereas all truth must be from God.[118]

Scriptural References in the Leges Visigothorum

Scripture was referred to or quoted in a number of civil laws. Most interesting, because dating before the conversion, is a passing reference to the Bible made in a statute of Euric and preserved in the *Liber iudiciorum.* In speaking of the authority of the husband over his wife it says: "*. . . vir, qui uxorem suam secundum sacram scripturam habet in potestate. . . .*"[119]

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[116] *Leg. Vis.*, XII, 2, 1.

[117] *Leg. Vis.*, VI, 2, 1; cf. *Lex Rom. Vis.*, IX, 13, 2 (*C. Th.*, IX, 16, 4), and Pauli *Sent.*, V, 23, 3. *Leg. Vis.*, VI, 2, 4; cf. *Lex Rom. Vis.*, IX, 13, 1 and 3 (*C. Th.*, IX, 16, 3 and 7). *Leg. Vis.*, VI, 2, 5 and III, 4, 13.

[118] *Leg. Vis.*, VI, 2, 2.

[119] *Euriciana fragmenta*, 323; *Leg. Vis.*, IV, 2, 15.

In ruling that accidental homicide was not punishable Receswinth referred to the word of God as proof.[120] He justified the teacher, patron, or master causing the death of a pupil, client, or slave through discipline administered without malice with the text: *"Qui disciplinam abicit infelix erit."*[121] The text of the enactment which altered the law of Receswinth so that a widower who remarried might retain the guardianship of the children of his first marriage is a mosaic of biblical quotations. The law seems best attributed to Wamba.[122] A law of doubtful genuineness attributed to Wamba or Egica introduces a spurious scripture text.[123] Erwig in taking away the right of testimony from a perjurer referred to the divine law which declares such offenders worthy of death.[124] It should be noted that great respect was entertained for the sacredness of the oath in the Visigothic Kingdom. Sovereigns scrupled about their oaths and councils took great pains to interpret them. However, in judicial procedure rational proof was used instead of the compurgation resorted to in the other Germanic kingdoms.

Spiritual Penalties Imposed by Civil Law

The purely ecclesiastical sentences of anathema and excommunication were pronounced several times by the civil laws. This occurred ordinarily in *capitula* which were connected with a council or which referred to ecclesiastics, especially such as regarded the enforcement of legislation against the Jews by the clergy.[125] Occasionally other spiritual penalties were given by the code. Thus confinement in a monastery or convent according to sex was decreed for the parties of an incestuous union[126]; three years' exile and penance under a bishop for maiming one's own slave.[127]

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[120] *Leg. Vis.*, VI, 5, 1; Deuteronomy, xix, 4-6.

[121] *Leg. Vis.*, VI, 5, 8; Wisdom, iii, 11.

[122] For the text *v. Leg. Vis.*, IV, 2, 13* (Zeumer ed., pp. 180 ff.); for authenticity, *v.* Zeumer, "Geschichte der westgoth. Gesetzgebung, IV," *N. Arch.*, XXVI, 119.

[123] *Leg. Vis.*, VI, 5, 21.

[124] *Leg. Vis.*, II, 4, 7.

[125] *Leg. Vis.*, II, 1, 6; IV, 5, 6; IX, 1, 21; XII, 1, 3 (Erwig's approval of Toledo XIII; cf. also, the edict approving of Toledo XII); XII, 2, 15; XII, 3, 22; 24.

Privileges of the Church before the Law

In spite of the position which the Church enjoyed in Visigothic Spain it did not press its claims to privilege as far as one might expect. It is not to be supposed that clerics, or even bishops were above and outside of the jurisdiction of the civil courts. The Third Council of Toledo (589) forbade clerics to hale other clerics before secular judges under severe penalty; implicitly it recognized that lay persons might do so.[128] By a law of Receswinth bishops were ordered to answer a court summons not in person but by proxy. This was in deference to their dignity, but also lest their presence should awe parties appearing against them.[129] A bishop who refused to obey the summons of a judge was to be heavily fined; another cleric for this offence was to be fined or made to fast.[130] A bishop who as judge decided a case unjustly was, as we have seen, subject to punishment just as a purely civil official.[131] Priests as well as minor civil officials conniving at the concealment of fugitive slaves were to receive three hundred lashes; bishops remiss in having these lax officials punished were obliged to fast for thirty days with only a little barley bread and water in the evening.[132] A priest taking anything from a church built by private individuals and transferring it to his own church was to be reported to the bishop or a *judge* for correction. A bishop guilty of such action was to be denounced to his metropolitan; the latter to the king.[133] This legislation in favor of privately built churches was reinforced by King Wamba, who decreed that if a bishop appropriated any such church property to his own use or laid claim to it on a plea of prescription he was to be prosecuted in the civil courts. If he was unable to make restitution he was to fast as a penalty.[134]

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[126] *Leg. Vis.*, III, 5, 1 (Chindaswinth).

[127] *Leg. Vis.*, VI, 5, 13 (Receswinth and Egica).

[128] Canon 13.

[129] *Leg. Vis.*, II, 3, 1; the *Lex Romana Visigothorum* permitted bishops and priests to be represented in civil court by substitutes (*Nov.* Valentiniani XII; *C. Th.*, XXXV).

[130] *Leg. Vis.*, II, 1, 19, a law of Chindaswinth.

[131] *Leg. Vis.*, II, 1, 24; cf. also, XII, 1, 2.

[132] *Leg. Vis.*, IX, 1, 21.

The prelates at the Fourth Council of Toledo (633) secured a concession from King Sisenand, to whom their support was so important, inasmuch as he granted free clerics immunity from certain taxes and obligations (*"ab omni publica indictione atque labore habeantur immunes"*).[135] This privilege of the Church began in the celebrated letter of Constantine to Anulinus. The reason he gave for granting it was alleged by this council of Toledo with merely a change of words: "Lest by a fatal error, or a sacrilegious exaction they be deviated from the divine worship, and that they may in perfect liberty consecrate themselves to the function of their ministry." [136] The *Lex Romana Visigothorum* (506) had anticipated this legislation of the Fourth Council by granting the clergy some of the immunities accorded in the Theodosian Code. Clerics were excused from discharging all civil offices.[137] When one considers the *munera* to which the *curiales* were bound this was no mean exemption.[138]

A cleric born of a family which belonged to the *fiscus* was not to be demanded (as a slave) by any one on the plea that the king had given him the family, but the cleric having paid the price of his redemption was to remain in the service of his church. This was canonical legislation.[139] According to a law of King Receswinth a freedman raised to Holy Orders might not be recalled to *patrocinium* by heirs of the former master, because it was improper that one belonging to God in a higher service should be bound by *obsequium* to men.[140]

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[133] Toledo IX, canon 1.

[134] *Leg. Vis.*, IV, 5, 6. The fasting penalty was in imitation of Toledo XI, canon 5.

[135] Canon 47; Dahn discusses the extent of this immunity, *Die Könige der Germanen*, VI^2, 256-257. Church lands were not free from tax: *v. tomus* addressed by Egica to the Sixteenth Council (Mansi, XII, 62).

[136] Eusebius, *H. E.*, IX, vii (*Nicene and Post-Nicene Fathers*, Second Series, I, 383).

[137] *Lex Romana Visigothorum*, XVI, 1, 1 (*C. Th.*, XVI, 2, 2); *Nov.* Valentiniani XII in *Lex Rom.* (XXXV in *C. Th.*); *Nov.* Maioriani I in *Lex Rom.* (VIII in *C. Th.*).

[138] Boyd, *The Ecclesiastical Edicts of the Theodosian Code*, pp. 72-73.

Property Rights of the Church

Most important, though not unusual, was the fact that the Visigothic Church was protected by the government as regards its property. These rights of the Church were repeatedly stated by the councils.[141] They had also been recognized by the *Lex Romana: "Divini* [*iuris*] *sunt ecclesiae, id est, templa Dei, vel ea patrocinia ac substantiae quae ad ecclesiastica iura pertinent."* [142] Church property might not be alienated.[143] Only after debts and legacies to the churches were deducted from an estate might the rule of the Falcidian Fourth be applied in favor of the heirs [144]; the Church might receive bequests, as well as the property of clerics dying intestate and without heirs.[145]

Even pre-Recared legislation as contained in the *Leges Visigothorum* protected the Church in its temporal possessions. An inventory was to be taken of the church property each time a new bishop was installed, and any missing property was to be reclaimed from the heirs of a deceased bishop; alienated church property was to be restored together with its increment and the purchase price was to be refunded.[146] Church property might be alienated only in accordance with the canons.[147] Heirs of clerics holding church property forfeited such holdings if they left the service of the Church.[148] A law of Receswinth declaring the right of churches to receive donations and hold them irrevocably was a clear-cut recognition of the principle of mortmain in favor of the Church. The king urged the propriety of giving temporal goods to religious purposes.[149] Wamba's law which forbade bishops to take over churches privately founded shows the existence in the Visigothic kingdom of these private churches coexisting with the diocesan churches. The law protected these foundations from episcopal control.[150]

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[139] Toledo III, canon 8; cf. Toledo IV, canon 73.

[140] *Leg. Vis.*, V, 7, 18.

[141] Toledo II (527), canon 4; Toledo III (589), canons 3, 4, 9, 15, 19; Toledo VI (638), canon 15; practically all the canons of Toledo IX (655), etc.

[142] An adaptation of Gaius, II, 1, in the *Lex Romana Visigothorum;* cf. edition of Haenel, pp. 322-324; Conrat, *Breviarium Alaricianum*, "Res Divini Iuris," p. 791.

[143] Gaius, II, 9, 5; cf. Haenel, p. 334; Conrat, *loc. cit.*

[144] Paulus, IV, 3, as interpreted by the *Lex Romana; v.* Haenel, p. 400; Conrat, p. 801. The *Lex Falcidia* guaranteed an heir the fourth part of the *hereditas* before legacies could be subtracted (Gaius, II, 224-227; *Inst. Just.*, II, 22).

[145] *Lex Romana*, V, 3, 1 (*C. Th.*, V, 3, 1).

Summary

In summarizing this chapter we find that one phase of the close union between Church and State in Visigothic Spain was a marked degree of collaboration in the civic administration. In dispensing justice the kings felt the need of assistance from the Church and called upon councils and bishops to participate in civil judicature. The importance of this participation becomes evident when one recalls the close union which existed between the executive and judicial functions in the kingdom.

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[146] *Leg. Vis.*, V, 1, 2. The part of this law referring to the inventory was a frequently repeated ecclesiastical ordinance.

[147] *Leg. Vis.*, V, 1, 3 (*Antiqua*).

[148] *Leg. Vis.*, V, 1, 4 (*Antiqua*).

[149] *Leg. Vis.*, V, 1, 1.

[150] Toledo III (589), canon 19, forbade such private ownership of churches, i. e., they were to be administered by the bishop; cf. also Synod of Lerida (524?), canon 2; Toledo IV (633), canon 33; Toledo IX (655), canons 1 and 2, protected the founders of churches in certain rights; v. also Synod of Toledo in 597, canon 2. Cf. Zeumer, "Gesch. der westgoth. Gesetzgeb. IV," *N. Arch.*, XXVI, 148-149; and Ulrich Stutz, *Geschichte des kirchlichen Benefizialwesens*, I, 103-108, "Die westgothischen Eigenkirchen."

During the Arian period the Catholic clergy were permitted to arbitrate in secular matters according to the provisions of Roman law. There are indications that these ecclesiastical tribunals were much resorted to. After the conversion of the Goths the bishops were made overseers of the civil magistrates. The Third Council of Toledo (589) endeavored to bring the civil officials before the annual provincial synods for instruction in justice and benevolence. The Fourth Council (633) made the synods courts of appeal against unjust magistrates. The kings solicited this supervision on the part of the Church because of the venality of secular officers and their tendency to oppress the people. When in the middle of the seventh century Chindaswinth found it necessary to reform the judicial system he increased rather than diminished the participation of the Church in the matter. Bishops were actually given civil jurisdiction and invited to sit with the secular judges when the latter were distrusted by litigants. Later kings confirmed and continued this policy. The Visigothic Church did not wrest these powers from weakling kings. It was commanded to assume them by able sovereigns who felt that the bishops with their high moral standards were the best champions of justice against the corruption of lay officials.

The influence of the Church extended also to the law which the judges were to dispense, modifying it and softening it. The councils showed a tendency to relax laws which, to the ultimate harm of the kingdom, dealt too harshly with political offenders. The right to a just trial was championed against arbitrary punishment even at the hands of the king. Ecclesiastics acting as judges might not be responsible for the shedding of blood. Right of sanctuary was insisted upon. The councils strove to curb a harshness on the part of ecclesiastical superiors, which was presumably a part of their barbarian inheritance.

The ethical standards set by the Gothic civil code were on the whole remarkably high and for the most part not far removed from the Christian ideals. Laws on sex morality, marriage, and the position of women showed considerable influence of Christianity. Bishops and judges were together deputed to fight certain social evils. The *Liber iudiciorum* supported canonical legislation in regard to the observance of clerical celibacy and the vows of religion.

Very many civil laws borrowed motives from religion and showed the impress of the religious faith of the rulers. In most cases this religious influence worked to the evident good of the people. It served to place the law code on a much higher plane than could be expected in a barbarian kingdom. The anti-Jewish legislation, which will be dealt with in the succeeding chapter, forms a notable exception.

Despite its position in the kingdom the Church did not lay claim to undue advantage and privilege. The councils respected the civil courts, and ecclesiastics by no means claimed freedom from their jurisdiction. The immunities of the clergy were less if anything than those enjoyed by them under the Roman Empire. Even the liberal protection of the property interests of the Church was in accord with the tradition in the Roman world.

The problems to be discussed in the ensuing chapter show further the inter-relation of ecclesiastical and civil activity in the internal affairs of the kingdom. They are, it is true, matters of internal administration, but they are social problems primarily, and as such merit separate treatment.

CHAPTER VI

Social Problems in the Visigothic Kingdom

Social life in Visigothic Spain was simple in the extreme, as might naturally be expected among a people whose principal occupation was agriculture. The conditions which prevailed offered no complicated problems in group or class adjustment and brought forth none of the difficult social questions such as arise among a people given to commerce and manufacture. Hence in determining the social conditions in the kingdom it will be necessary, and in fact it is possible, to deal with only a very small number of topics. The intimate union between Church and State gave a definite turn to social life in the kingdom and the chief interest of this chapter lies in observing the combined activities of Church and State in moulding and directing social effort.

The relation between Romans and Goths after the conversion of the latter to the Catholic Faith does not appear to have given rise to any social problem. There seems to have been no conflict and little distinction between the two races. The kings and the palatine officials were Gothic. Among the prelates of the Church there was a far greater number of Romans than Goths. Unfortunately the proportion of Goths and Romans in the other walks of life is not known. As for class distinctions, while the nobles were clearly distinguished from the common people, this distinction has left but a meager imprint on Visigothic history and legislation. The primary source of distinction and the factor which colored all social life and legislation is to be found in the different methods of grouping which ran through all of Visigothic life and effort—the one, social, drawing a line between the freeman and the slave; the other, religious, setting up a barrier between the Christian and the Jew. Slavery in the Gothic State was the basis on which the economic life of the people rested. Judaism was a source of constant irritation, as well because of the different economic outlook of the Jews as because of the difference in religion. It can be said without exaggeration that, as far as social legislation is concerned, these were the problems to which the lawmakers were constantly forced to turn their attention. Other matters naturally arose affecting family and social life, not as a result of the peculiar needs of the Visigothic State, but rather because of the effort to place the family on something approximating a Christian basis. These have been touched upon in the preceding chapter.

In discussing the social problems attention will first be called to the class distinction between the *potentiores* and the *pauperes,* about which much cannot nor need be said. The subject of slavery will be dealt with in a manner befitting its importance in a society which rested on slavery and in accordance with the multitude and variety of laws which civil and conciliar legislation reveals. Similarly Judaism will call for detailed discussion because of its importance and because of the fullness with which it is treated in the various codes of law.

I. *Class Distinctions*

The Potentiores and the Pauperes

Turning first to the question of social classes we find that distinctions were rather sharply drawn: the powerful nobles, the common freemen, the freedmen, and the slaves. The nobility was founded upon wealth; in fact the ordinary freemen, i. e., all those who were not *potentiores* were regularly referred to as *pauperes.*[1] Before the law the possession of wealth was a great advantage, since penalties might ordinarily be paid in money by one who had it, whereas the *pauper* paid with his body under the lash or by enslavement.[2] Persons of higher rank were not put to judicial torture as readily as those of lower station.[3]

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[1] Cf. Zeumer, "Geschichte der westgothischen Gesetzgebung," *Neues Archiv,* XXIV, 80-81.

[2] Cf. *Leg. Vis.,* II, 1, 17; 19; 24; 31; 2, 5; 8; 9; 4, 2; 3; 6; 8; etc.

The *potentiores* were themselves inclined to oppress the classes beneath them, though here the law came valiantly to the support of the ordinary freeman, endeavoring especially to guarantee him legal justice. Judges were forbidden to show favor to a litigant because of his rank. Interference in court proceedings on the part of powerful personages was sternly prohibited. While a litigant might be represented in court by another person, he was forbidden to choose as attorney a more powerful personage than his opponent with the purpose of securing an unfair advantage in the trial. On the other hand, a man of lower rank was permitted to choose a proxy equal in dignity to his opponent. The smaller freeman was protected against enslavement on a fictitious claim advanced by a powerful personage.[4] Many of the laws in favor of the *pauperes* were framed in the reign of King Chindaswinth (642-653), who, as we have seen, made an extensive reform in the administration of justice. Whether the spirit of Christianity induced him to espouse the cause of the lower classes, or whether his reform was a part of his political fight against the nobles there seems to be no way to decide. But it is significant that he called upon the bishops to aid him in carrying out his judicial reform.

The Slaves

Much less fortunate before the law than the lower freeman was the slave. The history of slavery in Visigothic Spain does not offer a pleasant picture. Before the invasions of the barbarians servitude had gradually been declining in the Roman Empire. Christianity, it is true, did not attack the institution directly, but its teaching that all souls are made in the image of God, endowed with immortality, destined for eternal beatitude, its insistence on the fundamental equality of all men before God, its spiritual ministrations to all men alike, regardless of race or social rank, had slowly ameliorated the condition of slaves and encouraged emancipation. Furthermore, the end of Roman conquest had very definitely cut off the supply of slaves in the Empire and their number grew fewer and fewer.

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[3] Cf. *Leg. Vis.*, II, 3, 4; VI, 1, 2.

[4] Cf. *Leg. Vis.*, *liber* II, *tituli* 1, 2, and 3, *passim;* II, 5, 9; XII, 1, 1; VII, 2, 20; V, 7, 4-8.

With the coming of the barbarians improvement in the condition of slaves was greatly retarded. A large number of captives taken by the invaders were reduced to serving their captors, who were themselves disinclined to labor.[5] In all the barbarian kingdoms slaves were accorded harsh treatment; even in the disputes of Christians. After the Peace of the Church the law codes did not reflect the considerable humaneness which Roman law had gradually acquired. It must be recalled, however, that until the middle of the seventh century the Roman subjects of the Visigothic State lived under Roman law, their own *Lex Romana Visigothorum,* and a large number of slaves undoubtedly profited to some extent by this fact.[6]

The Slaves before the Civil Law

The *Leges Visigothorum* are our chief source of information for the status of slaves in Gothic Spain. We learn from them that there were slaves of different rank: *servi idonei* were contrasted with *viles, viliores, vilissimi servi,* and were accorded better treatment before the law.[7] Crown slaves (and church slaves as we shall see later) were more fortunately situated than those of others. Some crown slaves attained to positions of trust and honor in the royal palace: chief-groom, chief-butler, chief-silversmith, chief-cook, etc.[8] They became owners of lands and even of slaves, as is implied by a law limiting the alienation of such possessions.[9] The Third Council of Toledo (589) made regulations concerning the acceptance of churches built and endowed by this same class.[10]

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[5] Cf. Paul Allard, *Les origines du servage en France,* pp. 32 ff.

[6] Cf. Allard, *op. cit.,* pp. 46 ff.; *idem,* "Esclavage," *Dictionnaire apologétique de la foi catholique*^{4}, I, 1479 ff.

[7] Cf. *Leg. Vis.,* III, 3, 9; VI, 4, 3; 7; XI, 1, 1.

[8] *Leg. Vis.,* II, 4, 4.

Enslavement

The law was solicitous in guaranteeing the liberty of freemen. The attempt to sell a freeman into servitude was severely punished;[11] parents were restrained from selling or giving their children into slavery;[12] a person claiming another as his slave was required to offer proof in court before taking possession of him.[13] Likewise a slave properly emancipated might not be reclaimed by his former owner, unless the freedman should act insolently toward the former master or bring accusation against him. Such charges of insolence against a freedman were to be proved before a judge.[14] A slave who declared himself to be a freeman was to be given opportunity to prove his assertion in court.[15] On the other hand, enslavement was the rather frequent penalty attached to certain serious offences. This punishment might be visited on one who failed to come to the defence of king or kingdom in time of war;[16] on one who ravished a free woman;[17] on an unfaithful wife or woman betrothed and her paramour;[18] on a woman slaying her unborn child by means of drugs;[19] on a person kidnapping a freeborn child;[20] or abandoning his own offspring;[21] on one consulting a soothsayer in regard to the health or death of another;[22] on a person exposing another to torture at the hands of the law through false accusation;[23] on a judge subjecting a defendant to torture so immoderate as to cause death;[24] on one giving false testimony which reduced an accused person to servitude;[25] on one forging or altering documents.[26] Even this is not an exhaustive list of the crimes to which the penalty of servitude was attached. In many instances, however, slavery was imposed only if the person was unable to pay the fine.

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[9] *Leg. Vis.*, V, 7, 16.

[10] Canon 15.

[11] Cf. *Leg. Vis.*, V, 4, 11.

[12] Cf. *Leg. Vis.*, V, 4, 12.

[13] Cf. *Leg. Vis.*, V, 7, 8; cf. V, 7, 4; 5, 7.

[14] *Leg. Vis.*, V, 7, 9; 10; cf. V, 7, 5; 6.

[15] *Leg. Vis.*, V, 7, 3; cf. V, 7, 7.

[16] *Leg. Vis.*, IX, 2, 8; 9.

[17] *Leg. Vis.*, III, 3, 1.

[18] *Leg. Vis.*, III, 4, 1; 2; 12; 13. More exactly, the guilty parties were to be handed over to the outraged husband. Cf. laws on divorce: III, 6, 1; 2.

[19] *Leg. Vis.*, VII, 3, 1.

The code was most zealous in striving to prevent slaves from fleeing their servitude. Nearly all the twenty-one laws forming the first title of the ninth book are directed against fugitive slaves: aiding, sheltering, concealing them were all serious offences; officials were punished for not energetically seeking them out. And yet the very necessity for this legislation indicates all too plainly that popular sympathy was with the slaves rather than with the owners. The laws reflect the mind of those who were interested economically in the preservation of slavery as an institution rather than the attitude of the people in general. In fact the last extant law on the matter—drafted by King Egica (687-702)—lamented the ever growing number of fugitives and the disregard for laws concerning them so that they were concealed in every "*civitas, castellum, vicus aut villa vel diversorium.*"[27]

Harshness of the Law toward Slaves

In the treatment of the slave the law, especially in the earlier period, made practically no recognition of individual right. The master's rights over a slave were almost without limit. Indication of this, implicit but eloquent, appears in the fact that when a slave committed a crime at the behest of his master the latter was held entirely responsible by the law.[28] When injuries were sustained by a slave at the hands of another person the latter was required to make recompense to the master. Before a slave might be put to torture on any charge the accuser must agree to give the master a slave of equal value should the innocence of the accused be established. If the tortured slave was found innocent but died or was disabled as a result of the torture, the accuser was to give two slaves to the master and the disabled victim was to be free. A judge who administered torture to a slave immoderately was to give the master another slave. Careful provision was made for an owner who lost a skilled slave by torture.[29] When a freeman caused an abortion in the case of a slave mother his sole penalty was to pay twenty *solidi* to the master.[30]

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[20] *Leg. Vis.*, VII, 3, 3.

[21] *Leg. Vis.*, IV, 4, 1.

[22] *Leg. Vis.*, VI, 2, 1; cf. VI, 2, 2.

[23] *Leg. Vis.*, VI, 1, 2.

[24] *Loc. cit.*

[25] *Leg. Vis.*, II, 4, 9.

[26] *Leg. Vis.*, VII, 5, 2.

[27] *Leg. Vis.*, IX, 1, 21.

The civil code contained drastic regulations limiting the right of slaves to marry. If a freeborn woman married her own slave or freedman or cohabited with him both parties were to be scourged and burned alive.[31] If she should marry the slave of another the law prescribed that the union be broken and the parties beaten with a hundred lashes. Should three such attempts to separate the couple prove futile the woman was to be handed over to her relatives, and if they permitted her to return to the slave she herself was then to be enslaved to the

[28] *Leg. Vis.*, VI, 4, 2; VII, 3, 5; VII, 4, 1; VIII, 1, 1; etc.

[29] *Leg. Vis.*, VI, 1, 5.

[30] *Leg. Vis.*, VI, 3, 4 (an early law retained in later revisions). Cf. the code, *passim*, for other instances in which the loss of the master was consulted rather than the suffering of the injured slave.

[31] *Leg. Vis.*, III, 2, 2. This harsh law had precedents in both Roman and Germanic legislation; in fact the *Lex Romana Visigothorum* (IX, 6, 1; *C. Th.*, IX, 9, 1) retained a law of Constantine which punished with death a freewoman who had secret commerce with her slave, though it did not expressly forbid their marriage. For precedents, cf. Zeumer, "Geschichte d. westgoth. Gesetzgeb. III," *N. Arch.*, XXIV, 589-592. Pope Calixtus in the third century had declared that a matron might validly marry her own slave, but even Christian emperors had repudiated this in their laws (cf. Allard, *Les esclaves chrétiens*, pp. 264-275).

master of her husband. The same law was to be applied to a freeman who married the slave of another. The children of such a union were to be slaves.[32] A freedman or freedwoman marrying a slave was to be warned three times by the slave's master to abandon the union. If it continued the free party was reduced to servitude.[33] An early law declared for the freedom of the children of a freeborn person who married a fugitive slave without knowledge of the latter's servile state,[34] but Erwig—because such marriages had become of frequent occurrence—decreed that the children were to be enslaved.[35] If a master induced a freewoman to marry his slave, whom he had represented as free, the slave gained his own liberty and that of his children. If the woman could not prove the false representations of the master she became a slave. The law likewise applied to female servants marrying freemen.[36] A master who married his slave to the slave of another without the latter's consent lost his slave and all right to the children.[37] When a slave married the slave of another master the children of the union belonged equally to the two owners; if the number proved to be uneven one master was to pay the other for his share in the ownership of the odd slave. If one of the masters objected to the marriage he might separate the slaves within a year.[38] Freedmen or their descendants, under pain of losing their liberty, might not marry into the family of former masters, lest the nobler blood be disgraced.[39]

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[32] *Leg. Vis.*, III, 2, 3. This law too was based on Roman and German precedents (cf. Zeumer, *op. cit.*, pp. 592-594). The *Senatus Consultum Claudianum*, the Roman basis of the law, had not been introduced into the *Lex Romana Visigothorum* (cf. Zeumer, *op. cit.*, *N. Arch.*, XXIII, 455) probably because the principle of enslaving a woman for marrying a slave was abandoned in Roman law about the end of the fifth century (*ibid.*, p. 527). The penalty of flogging and the turning over of the woman to her family were typically Germanic. The enslavement of a freeman for the same offence was without precedent in Roman law: the *Lex Salica* (25, 5) has the penalty for the man (cf. Zeumer, *N. Arch.*, XXIV, 594).

[33] *Leg. Vis.*, III, 2, 4. For precedent in Roman law, cf. Zeumer, *N. Arch.*, XXIII, 455-457, and *Leges Visigothorum*, p. 136, notes 1-4.

[34] *Leg. Vis.*, IX, 1, 16.

[35] *Leg. Vis.*, IX, 1, 16. Even then according to some manuscripts if a freewoman could swear that she had married a slave unwittingly the children were to be free (cf. Zeumer, *Leges Visigothorum*, p. 361).

[36] *Leg. Vis.*, III, 2, 7. This rather humane law, similar to *Nov.* XXII, 1, of Justinian, was introduced by Chindaswinth (cf. Zeumer, *N. Arch.*, XXIV, 546).

[37] *Leg. Vis.*, III, 2, 5.

In matters of chastity heavy penalties were enacted against guilty slaves. If one of them violated a freewoman he was to be burned, whereas a freeman for the same offence was beaten and enslaved.[40] The honor of the female slave was not reckoned so high: a slave violating her was to suffer two hundred lashes; a freeman, fifty lashes and a fine of twenty *solidi* to the master.[41] The difference in punishment for slaves and freemen was not so great when there was a question of abduction, i. e., the mere carrying off of a woman.[42]

We have seen before that corporal punishment was frequently the lot of the poorer person when for the same crime a wealthy man could escape with a fine. Perhaps it was because he was presumed by the law to be unable to pay fines that a slave was so often threatened with physical chastisement, especially flogging, whereas his free neighbor might escape with a money payment.[43]

The *Leges Visigothorum* like Roman law admitted the testimony of slaves in court only to a very limited degree. Ordinarily a slave might not offer testimony against his master, though to obtain evidence in case of adultery, treason, counterfeiting, or witchcraft on the part of his master, he might be put to torture; should he testify voluntarily concerning any such crime he was to be tortured to confirm the truth of his testimony.[44] Even a freedman might not give testimony against his former owner or the latter's heirs under pain of losing his freedom.[45] In the later period the kings conceded slaves considerable right in regard to testimony. Chindaswinth (642-653) decreed that royal slaves in the higher offices might act as witnesses, and that other royal slaves might do so with the permission of the king.[46] Receswinth (649-672) declared all slaves competent witnesses in cases of homicide when free persons could not be presented, in minor civil matters, in cases of fugitive slaves, and when the slaves themselves were seized by other persons.[47] A much more important concession to the slave class was a law of Chindaswinth compelling a freeman to accept a summons to court when the accuser was a slave.[48]

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[38] *Leg. Vis.*, X, 1, 17 (Chindaswinth).

[39] *Leg. Vis.*, V, 7, 17 (Receswinth).

[40] *Leg. Vis.*, III, 4, 14.

[41] *Leg. Vis.*, III, 4, 16; cf. III, 4, 15.

[42] *Leg. Vis.*, III, 3, 1-12.

[43] Cf. *Leg. Vis.*, II, 2, 7; VI, 4, 3; 4; VII, 2, 22; 3, 1; 4, 1; 6, 2; VIII, *passim*.

Humaneness in the Legislation of the Later Kings

There is further evidence that the cause of humaneness was consulted by these later sovereigns. Chindaswinth forbade a master arbitrarily to take the life of his slave and prescribed that a slave under accusation be given a trial before a judge. Should a master disregard this law he was to be exiled for life and subjected to penance, while his property was to be given to his heirs. If a man killed the slave of another two slaves were to be given to the injured master as restitution and the murderer was to undergo the other penalties mentioned above.[49]

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[44] *Leg. Vis.*, III, 4, 10; VI, 1, 4; VII, 6, 1. Cf. Pauli *Sent.*, II, 26, 9 and *Lex Romana Visigothorum*, IX, 3, 1 (*C. Th.*, IX, 6, 2); IX, 3, 2 (*C. Th.*, IX, 6, 3); IX, 4, 3 (*C. Th.*, IX, 7, 4).

[45] *Leg. Vis.*, V, 7, 9; 11. Cf. *Lex Rom. Vis.*, and *C. Th.*, IV, 10, 1; 2. Cf. Toledo IV, canon 68. Receswinth modifying an older law admitted the testimony of freedmen against their former masters under certain restrictions (*Leg. Vis.*, V, 7, 12). Cf. Zeumer, *Leges Visigothorum*, p. 239, note 1.

[46] *Leg. Vis.*, II, 4, 4.

[47] *Leg. Vis.*, II, 4, 10.

[48] *Leg. Vis.*, II, 2, 9.

[49] *Leg. Vis.*, VI, 5, 12. In Erwig's redaction of this law the penalties on the murderer seem to have been reduced to a fine and perpetual infamy,

There had been similar legislation, taken from the Theodosian Code, in the *Lex Romana Visigothorum.*[50] Even the pagan Roman emperors had endeavored to limit the power of the master over the life and death of his slaves.[51] Gaius in his *Institutes* attributes to Antoninus a constitution which forbade a master to kill his slave without just cause.[52] But the *Leges Visigothorum* had hitherto left the slave to seek justice at the hands of his owner. An early law declared that if a slave stole from his master or fellow-slave he was to be at the mercy of the master; nor was the latter required to refer the case to a judge.[53] It seems reasonable to presume that the infusion of justice into the slave law of the Visigoths in the middle of the seventh century must be attributed to the mild influence of Christianity. It can scarcely be looked upon as part of the policy by which Chindaswinth fought the noble factions against him, since he would hardly have placed much reliance on the slaves in this political struggle.

With the law of Chindaswinth is expressly linked the next decree of the code as part of the same humane policy,[54] and the motive for this second enactment was explicitly supplied by the Christian faith of the legislator. It forbade a master to maim or mutilate his slave as a punishment instead of bringing him before a court because *a creature made in the image of God* was not to be deformed. The penalty was three years of exile and penance. The law was first framed by Receswinth and restored by Egica, who deprecates the fact that Erwig, his own immediate predecessor, had expunged it from the code. The

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so that the offender lost his right of testimony. However, some of the manuscripts repeat the penalties assigned by Chindaswinth (cf. Zeumer, *Leges Visigothorum*, p. 275).

[50] *Lex. Rom. Vis.*, IX, 9 (*C. Th.*, IX, 12).

[51] Allard, *Les esclaves chrétiens*, pp. 97 ff.

[52] Gaius, I, 52 and 53.

[53] VII, 2, 21.

[54] "*Superiori lege dominorum indiscretam sevitiam a servorum occisione privabimus*" (VI, 5, 13).

motive borrowed from the religious belief in man's high origin was especially emphasized by Egica in his decree of restoration.[55]

Chindaswinth (642-653) likewise made regulations regarding the infliction of judicial torture on slaves so that an accuser exposed a slave to torture at his own peril if he could not prove the guilt of the slave. Although the injury to the master was primarily consulted in the matter of penalties, these penalties were severe enough to deter anyone from falsely or rashly accusing a slave.[56] The same king allowed a slave to be beaten who acted insolently toward a noble, but he decreed that if the noble wantonly excited the slave of another to anger he could expect no redress for insult.[57] May we not also consider the law of Chindaswinth which decreed capital punishment for any mother, slave or free, who put to death her child either before or after birth as an indication of the fact that a fundamental difference in men was no longer recognized regardless of whether they were born into servitude or liberty? [58]

King Erwig (680-687) decreed that when the country needed military defence all slave owners should bring a tenth of their slaves equipped with weapons into the army. The fact that slaves were thus to be included among the defenders of the country is presumptive evidence not only of the fact that they enjoyed the confidence of their masters but also of a change in their status before the law. They were not considered to be without spirit and patriotism.[59] In the same spirit Egica (687-702) enacted a law calling especially upon the freedmen of the crown to come to the aid of the king in time of war.[60] These laws seem to indicate that the slaves in later Visigothic Spain were not a greatly contemned class. The impression grows when we find that the Thirteenth Council of Toledo (683) deemed it necessary, with the consent of King Erwig, to decree that slaves might not be elevated to the dignity of palatine officials, unless they belonged to the crown.[61] The decree was patently in favor of the noble class; it referred vaguely to instances in which former slaves had taken advantage of a position of power to persecute their one-time masters. Granted that the decree sinned against the spirit of democracy; the fact remains that a law was actually required to keep slaves from the highest offices in the realm.

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[55] *Leg. Vis.*, VI, 5, 13.

[56] *Leg. Vis.*, II, 3, 4, and VI, 1, 5.

[57] *Leg. Vis.*, VI, 4, 7.

[58] Cf. *Leg. Vis.*, VI, 3, 7.

[59] *Leg. Vis.*, IX, 2, 9. Cf. Jules Tailhan, "Les Espagnols et les Wisigoths," *Revue des questions historiques*, XXX (1881), 12.

[60] *Leg. Vis.*, V, 7, 19.

We must not fail to note an indication that Christianity began early in the Catholic period to operate in favor of the slaves even in civil life. Several of the Visigothic legal *formulae* refer to the emancipation of a slave as a work pleasing to God and assert as a motive the hope of heavenly reward. These documents belong to the reign of King Sisebut and are dated not later than 620.[62]

Church Slaves

After studying the position of the slave before the civil law we turn our attention to the treatment he received from the Visigothic Church. In this period bishoprics, parishes, and monasteries were in possession of a large number of slaves which had come to them through donations of lands with their *adscripti glebae.* Inasmuch as they were attached to the land belonging to a certain church and were not the personal property of the ecclesiastics themselves they were serfs rather than slaves. The Church was placed in a delicate position indeed: bishops and abbots as administrators were forbidden to alienate ecclesiastical goods, while the spirit of Christianity prompted them to emancipate their slaves.[63]

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[61] Canon 6.

[62] "Formulae Visigothicae," 4-6, MGH, *Formulae Merov. et Karol. aevi,* pp. 576-579.

[63] Cf. Allard, *Les origines du servage en France,* pp. 73 ff., and "Esclavage," *Dict. apologétique*^{4}, I, 1483.

The Rigorous Policy of the Councils

In Visigothic Spain the slaves of the Church seem to have been rather numerous. A church with ten slaves (*mancipia*) was called *pauperrima;* if it possessed a smaller number it was not permitted to have its own priest but was to be tended from another church.[64] Slavery was a very actual problem to the Spanish Church, and there is much legislation in the councils concerning it. For the most part these bodies saw fit to protect ecclesiastical property from the charitable zeal of individual bishops. They saw no incongruity in this attitude; there was no prohibition of Scripture directly against slavery, no official utterance of the Church. The Fathers justified the institution as necessary in consequence of the fall of man, as a needed check on sinful man; among others the great teacher of the Spanish Church, Isidore, declared slavery a divine dispensation to curb the license of men with salutary fear, though in the same breath he hastened to declare that *"there is no respect of persons with God,"* and that many slaves, subject to evil masters corporally, are superior to them in mind.[65]

Accordingly in Spain a bishop was explicitly forbidden to free the slaves of his church, unless he made compensation to the church from his private resources. To do so, it was declared, would not be charity; it would mean robbing the poor of something he himself had not given them. If a prelate had so emancipated slaves his successor was to call them back to the service of the church.[66] A bishop who donated property to the Church was permitted to free slaves in proportion to the amount of his gifts.[67] In spite of this legislation the Tenth Council of Toledo (656) complained that Bishop Ricimir of Dumio had bequeathed so much to the poor and freed so many slaves that his church had suffered. The council decreed that the freedmen who had profited by his lavish charity were to be dealt with by his successor and were to retain their freedom at his discretion.[68] The idea of compensation on the part of the bishop for slaves he freed was peculiar to the Spanish Church; there was no such stipulation in Britain, France, or Italy.[69]

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[64] Cf. the *tomus* of King Egica to the Sixteenth Council of Toledo (Mansi, XII, 62) and canon 5 of the same council.

[65] Isidori *Sententiae*, III, 47, 2-3. Cf. Carlyle, *A History of Mediaeval Political Theory in the West*, I, 111 ff.; Schilling, *Naturrecht und Staat nach der Lehre der alten Kirche*, pp. 219 ff. F. Pijper's "Christian Church and Slavery in the Middle Ages," *American Historical Review*, XIV (1909), 675-695, is a severe arraignment of the Church's attitude toward slavery. It is for the most part a bare statement of legislation, which, taken out of its historical context, scarcely offers a fair picture of the Mediaeval Church.

Slaves manumitted by the Church, as well as those freed by others but commended to her, and their children were to belong to the *patrocinium* of the Church,[70] and, lest the children should forget this, both parents and children were to make profession before the bishop of the fact that they owed their freedom to his church and should render *obsequium* and obedience.[71] At the succession of a new bishop the freedmen of the church were within a year to present their credentials to him under pain of falling back into servitude. However, to prevent abuse on the part of an avaricious prelate, they were to be warned of this obligation.[72] Freedmen who left the *patrocinium* of the Church and attached themselves to anyone else were to lose their liberty if they refused to return.[73] A bishop was not free to emancipate a slave to the extent of releasing him from the *patrocinium,* unless he gave two slaves in return.[74] Even then the freedman was obliged to render *obsequium* to the church which freed him: he was forbidden to bring charges or testify against it.[75] Those manumitted by the Church were obliged to entrust the education of their children to the church which gave them liberty.[76]

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[66] Toledo IV (633), canon 67; cf. Seville (590), canon 1; Merida (666), canon 6. The Council of Agde (506) had given a bishop the right to enfranchise such slaves as were deserving and to grant them a small estate (canon 7).

[67] Toledo IV, canon 69.

[68] Mansi, XI, 42-43. Previously Bishop Gaudentius had caused similar anxiety to the Council of Seville (590); cf. canon 1.

[69] Allard, *Dict. apol.*^{4}, I, 1492; *idem*, *Esclaves, serfs et mainmortables*, pp. 202-203.

[70] The Church was to retain over them the *ius patronatus* of Roman law.

[71] Toledo III (589), canon 6; IV (633), canon 70; IX (655), canon 15.

[72] Toledo VI (638), canon 9; Merida (666), canon 6; Saragossa III (691), canon 4.

Freedmen of the Church or their children were not to transfer any ecclesiastical property they received to outsiders; anything they wished to sell they were to offer to the church to which they belonged, or they might dispose of it to relatives under the same *patrocinium.*[77] Those emancipated by the Church were forbidden to marry the freeborn. If they did so, their children remained under the power of the Church. If the children tried to escape this all that they or their parents had obtained from the Church was, on the insistence of the bishop, to revert to her.[78] Evidently this was an attempt to keep ecclesiastical property from passing out of the control of the Church and to hold the descendants of freedmen under her *patrocinium.* King Wamba decried marriages between freedmen under the *patrocinium* of the Church and the freeborn as a great evil. He ordered judges to separate the parties to such unions as soon as they were discovered and empowered them to use the lash to bring about separation. If a couple refused to part, their children were to come under the service of the crown. The property of the freeborn person was to go to his heirs, or, in their absence, to the king. The law did not affect freedmen who had been emancipated from all *obsequium* to the Church.[79] It would appear that the councils and the king legislated in this matter from opposite motives: the former, to keep the families of freedmen under the Church; the latter, to keep the Church from extending her rights of patronage. The onus connected with the relation between the Church and her freedmen was not entirely on the side of the latter, since they were to receive the protection of the Church both as regards their liberty and their *peculium*.[80] If these freedmen were not kept under the guardianship of the Church they would probably have been bound by the exigencies of the time to commend themselves to lay nobles.

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[73] Toledo IV, canon 71.

[74] Toledo IV, canon 68; Mansi has a misprint—*dum* for *duo.*

[75] *Loc. cit. V.* Gaius, IV, 183; *Lex Rom. Visigothorum* (*C. Th.*), IV, 10, 2; *Nov.* Valentiniani, XXIV, 9 (*Lex Rom. Vis., Nov.* Val., VI); *Leges Visigothorum,* V, 7, 9 and 11.

[76] Toledo VI, canon 10.

[77] Toledo IX (655), canon 16. Cf. a similar law affecting crown slaves: *Leg. Vis.,* V, 7, 16.

[78] Toledo IX (655), canons 13 and 14; Merida (666), canon 20.

To say, as Pijper does, that the Visigothic Church created slavery where it did not exist is not entirely wrong; but it is utterly misleading.[81] The fact is that the Spanish Church made slavery the penalty for certain crimes even as the civil code did in more frequent instances. The Sixteenth Council of Toledo (693) in virtue of its civil power granted by King Egica declared slavery the punishment for conspiracy and treason.[82] In their determined efforts to secure clerical celibacy the bishops, harshly to our way of thinking, ordered women who lived in unlawful union with clergymen sold into slavery.[83] Spurious children of a cleric were to be held as slaves of the church which their father served.[84] The fanaticism which led to the enslavement of Jews will be dealt with later in the chapter.

Advantages of Church Slaves

The councils threw some protective legislation around the slaves of the Church. An early canon, enforced by a royal law, which forbade judges and representatives of the *fiscus* (*actores*) to exact services from slaves of the Church either in public or private business, must be regarded as favoring the slaves as well as the Church.[85] In evident imitation of the civil law of Recesswinth already discussed, the Council of Merida decreed that slaves should not be maimed by order of a bishop without a civil inquest; it likewise defended them from torture by priests who might suspect them of maleficent practices.[86] Though necessity for such legislation is a sad commentary on the barbarism of the times, which invaded even the ranks of the clergy, both Church and State strove to prevent inhuman cruelty to slaves. The ever-repeated canons prohibiting Jews from possessing Christian slaves were prompted by solicitude for the spiritual welfare of such slaves and fear lest they be proselytized to Judaism.[87]

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[79] *Leg. Vis.*, IV, 5, 7.

[80] Toledo IV (633), canon 72.

[81] *Op. cit.*, p. 689.

[82] Canon 10.

[83] Toledo IV (633), canon 43. Whether the Eighth Council (653) changed this or not it is impossible to say definitely because of divergence in manuscript readings (canon 5; *v. supra* p. 155 f.).

[84] Toledo IX (655), canon 10.

As elsewhere in the Church, slaves could be promoted to Sacred Orders after emancipation, and bishops were authorized to free slaves of the Church who felt themselves called to the priesthood. Even these freedmen remained under the *patrocinium* of the Church: their goods after death accrued to her, and they were not allowed to bring charges or testify against her.[88] Priests in charge of rural churches were urged to choose intelligent men from among the attached slaves to make them clerics and their assistants; if these were not freed, they were at least withdrawn from servile labor.[89] Freedmen other than those of the Church could become clerics only if their masters relinquished all right of patronage, lest otherwise clerics should be called upon to serve temporal masters.[90]

St. Leander in the rule he composed for Florentina, his sister, spoke of *ancillae* in the convent. Apparently he presumed that they remained *ancillae*, but he insisted that religious profession must make all nuns sisters. The *ancillae* were to be treated by the others as equals, but were themselves to be eager to serve out of a spirit not of servility but of charity. As models he referred to the patriarchs, who distinguished between sons and servants in temporal matters, but who had equal solicitude for both in regard to things spiritual.[91]

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[85] Toledo III (589), canon 21; *Leg. Vis.*, XII, 1, 2.

[86] Merida (666), canon 15; *v. Leg. Vis.*, VI, 5, 13.

[87] Councils, *passim.*

[88] Toledo IV (633), canon 74; IX (655), canon 11.

[89] Merida (666), canon 18.

[90] Toledo IV, canon 73; cf. III (589), canon 8; *Leg. Vis.*, V, 7, 18.

Summary

These then are the bits of information we have in regard to slavery in the kingdom. Rejuvenated by the barbarian invasions the institution was protected in Spain by the State and even by the Church. In both civil and ecclesiastical legislation this protection grew out of economic interests. The very multiplicity of the laws with which the State hedged around the vested rights of the owners shows that the general sympathy of the people was with the slave rather than with his master. The Visigothic Church clung to its slaves or serfs against the inherent spirit of Christianity, the councils supporting the institution with frequent canons and discouraging the inclination of individual bishops to free the slaves. It was the practical corporate body looking out for the economic interests of the Church in the face of the ideals of at least some of the members. Who would till the church lands if the slaves were emancipated? Perhaps their intimate connection with civil affairs and things temporal hardened the bishops and made them callous to the promptings of Christian ideals.[92] And still the number of church slaves emancipated must have been large; a law of King Wamba referred in passing to the many slaves of the Church that were set free.[93] The *Leges Visigothorum* treated the slaves very harshly in the earlier period, inhumanly in fact, until the later kings injected what was quite evidently a Christian respect for personal right into their legislation. It seems rather strange that there was no protest from the councils against the inhumanity of the early civil law which continued in force long after the conversion of the Goths from Arianism, but probably Roman law, which treated the slaves more mildly, was used rather widely in Spain up to the time that the *Leges Visigothorum* were made obligatory on all, and by that time the latter had been softened. At least in the final fifty years of the kingdom the treatment accorded the slaves seems to have been extraordinarily good.

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[91] Sancti Leandri Hispalensis episcopi *regula sive liber de institutione virginum et contemptu mundi ad Florentinam sororem*, 12.

[92] Councils in other barbarian kingdoms seem to have done considerably more for the slaves than did those in Spain. Cf. Allard, "Influence des conciles de l'époque barbare sur la condition des esclaves et des serfs," *Esclaves, serfs et mainmortables*, pp. 185-216.

[93] *Leg. Vis.*, IV, 5, 7.

II. *The Jews in the Visigothic Kingdom*

The problem which received most attention in the law of Visigothic Spain, attention quite out of proportion with its objective importance, was that concerning the Jews. The problem was old in the Peninsula; it had confronted the Fathers of Elvira (*ca.* 306), for the Jewish community in the Peninsula was even then large and influential, zealous and successful in efforts at proselytizing.[94] The council had forbidden Christians to marry them,[95] to eat with them,[96] to have their fields blessed by them.[97] The very canons themselves indicate plainly how intimate relations between the Christian community and their Jewish neighbors had become.

The Jews under the Arian Kings

Roman law contained a great variety of anti-Jewish laws. When the *Lex Romana Visigothorum* was compiled at the order of Alaric II, the mass of Jewish legislation was greatly simplified and reduced; contradictory and purposeless laws were eliminated and only such enactments were retained as King

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[94] Cf. Alfred W. W. Dale, *The Synod of Elvira*, pp. 254 ff.

[95] Canon 16.

[96] Canon 50.

[97] Canon 49.

Alaric intended to enforce.[98] Nevertheless, the *Breviarium* continued to place the Jewish population under considerable restriction. Jews were forbidden to molest converts from their faith to Christianity.[99] A Christian becoming a Jew was to be punished by confiscation of his goods to the *fiscus,* and a Jew proselytizing a Christian was threatened with confiscation and capital punishment.[100] Jews were prohibited from acquiring Christian slaves except by inheritance; they were, however, permitted to retain those previously owned. A Christian slave purchased by a Jew was to be freed.[101] Marriages between Jews and Christians were forbidden and punished as adultery.[102] Jews were forbidden to hold military or civil office, to act as *defensores* or gaolers, lest they should take advantage of Christians and especially priests. On the other hand, they were not excluded or exempted from public *munera.*[103] Though they might not build new synagogues, they were permitted to repair the old.[104] Most important of all, they were free to practise their cult with its ceremonies, and were not to be disturbed in Sabbath or festival observance for sake of fiscal or other business.[105] The authority of Jewish superiors was acknowledged not only in what concerned their own religion but also in civil matters. Jews might if they wished have recourse to their own elders for arbitration.[106] Several laws of the Theodosian Code which safeguarded Jews from the violence of Christians[107] were omitted from the *Lex Romana Visigothorum,* not because the protection was intended to be withdrawn, but because it was unnecessary; the ordinary police powers were deemed adequate to secure peace in the matter. The omission, however, of certain privileges—several in favor of the Jewish clergy,[108] the right of conducting their own Jewish market,[109] and the law permitting Jews to return to their own religion [110]—seems to have been dictated by an anti-Jewish spirit.[111]

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[98] Cf. Jean Juster, " La condition légale des Juifs sous les rois visigoths," *Études d'histoire juridiques offertes à Paul Frédéric Girard,* II, 277-278. The number of laws pertaining to the Jews was reduced from fifty-three to eleven.

[99] *Lex Rom. Vis.* (*C. Th.*), XVI, 3, 1.

[100] *Ibid.,* XVI, 3, 2, and *Nov.* III Theod.

[101] *Lex Rom. Vis.,* XVI, 4, 1; 2; *Nov.* III Theod.

[102] *Lex Rom. Vis.,* III, 7, 8; IX, 4, 4.

[103] *Nov.* III Theod.

[104] *Loc. cit.*

[105] *Lex Rom. Vis.,* II, 8, 3.

[106] *Ibid.,* II, 1, 10.

[107] *C. Th.,* XVI, 8, 9; 12; 21; 25; 26; 27.

Beyond this legislation of the *Lex Romana* adopted by Alaric II the Visigothic kings of the Arian period do not appear to have made laws in regard to the Jews; none are found among the laws framed by these sovereigns—the so-called *Antiquae* of the *Leges Visigothorum.* In fact the Jews lived under the *Lex Romana.*[112] It is noteworthy also that even the ecclesiastical synods held by the Spanish Catholics during this same period made no mention of the Jews. The Council of Agde (506), held almost simultaneously with the promulgation of Alaric's code, ordered a long catechumenate for converts from Judaism because of their proneness to apostasy,[113] and forbade Christians to take meals in common with the Jews.[114] But thereafter the half-dozen or more councils held in Spain before 589 quite ignored the Jews, though they would have been free to deal with purely ecclesiastical discipline concerning them.

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[108] *C. Th.*, XVI, 8, 2; 3; 13; 15.

[109] *C. Th.*, XVI, 8, 10.

[110] *C. Th.*, XVI, 8, 23.

[111] Cf. Juster, *op. cit.*, p. 278, note 4, no. 7.

[112] Any favors which the Arians might have conceded to the Jews would have been expunged from the code in the redactions by later anti-Jewish kings. As subsequent decrees imply even the laws of the *Lex Romana* were relaxed and Israelites lived in close intimacy with Christians. This tolerance of the Arian sovereigns is quite intelligible. In the period there was no marked effort to attain an ideal of religious unity; with the great cleft in the Christian body itself in Spain, scant attention could be paid to the smaller group of Jews; moreover, dogmatic differences between Jews and Arians were not so decided as they were between Jews and Catholics.

[113] Canon 34.

[114] Canon 40.

The Jews in the Catholic Period

The policy of both Church and State in regard to the problem of Judaism was radically changed in the period of Catholic unity. The council of 589 at the request of King Recared reasserted some of the provisions of the *Lex Romana,* which had evidently ceased to be enforced:[115] Jews were declared ineligible for any public office which might give them opportunity to inflict punishment upon Christians; they were forbidden to purchase Christian slaves for themselves, and if a Christian slave were introduced into any Jewish rite or circumcized he was to be freed and restored to his Christian religion; Jews were forbidden to have Christian wives or concubines, and children of such unions were to be baptized.[116] This last provision in regard to baptism was the only departure from the legislation of the *Lex Romana.* But the canon inaugurated a new policy whereby Church and State united in dealing with the Jews. The new legislation was resented by the Jews, who strove without success to bribe Recared.[117]

Until the time of King Sisebut (612-621) no further measures were taken against the Jews, who on their part had succeeded in nullifying the effect of Recared's severity under his successors by bribery.[118] Sisebut passed two laws which forbade to Jews the possession of Christian slaves, marriage with Christians, and proselytism in favor of their religion.[119] This legislation differed little essentially from what had gone before, but the sanctions attached were considerably more drastic. Though only these two anti-Semitic laws of Sisebut have come down to us, there is conclusive evidence that he went much further in a policy of persecution, imposing on his Jewish subjects compulsory conversion to Christianity or exile. Isidore of Seville censured him for forcing Jews into Christianity.[120] The Fourth Council of Toledo (633) made the same criticism and forbade such practice for the future, but ordered that those already converted in this manner remain Christians.[121] This harshness of Sisebut is difficult of explanation, as there are indications that his character was rather mild.[122] Perhaps the lure of confiscation tempted the king. It is significant that the sovereign acted independently of the Church. His two extant laws were promulgated without any reference to ecclesiastical approval, and his odious law of compulsory conversion was criticized by the clergy. This interference in matters of religion agrees with many of his actions; he seemed to consider himself as almost a super-bishop.[123]

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[115] Cf. Dahn, *Die Könige der Germanen,* VI², 413.

[116] Toledo III, canon 14. Recared introduced a stringent law into the code forbidding the possession of Christian slaves by Jews and especially their circumcision (*Leg. Vis.,* XII, 2, 12). E. H. Lindo, *The History of the Jews of Spain and Portugal,* translates the canons and laws pertinent to the Jews into English; otherwise the work is of mediocre value.

[117] Cf. the letter of Pope Gregory the Great praising Recared for refusing the bribe: "Epistola Papae Gregorii ad Recharedum Visigothorum Regem," Migne, *P. L.,* LXXVII, 1052-1056.

[118] Cf. *Leg. Vis.,* XII, 2, 13 (Sisebut).

What the policy of King Swinthila (621-631) toward the Jews was we cannot safely say. There is no evidence even remotely contemporary to show that he recalled those who had been banished,[124] but the records of the Fourth Council of

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[119] *Leg. Vis.*, XII, 2, 13 and 14.

[120] "Qui [Sisebutus] initio regni Judaeos ad fidem Christianorum permovens aemulationem quidem habuit, sed non secundum scientiam, potestate enim compulit quos provocare fidei ratione opportuit. Sed, sicut scriptum, sive per occasionem, sive per veritatem, donec Christus annuntiatur" (*Historia Gothorum*, 60). Cf. *Continuatio Isidoriana Hispana*, 15: "[Sisebutus] Judaeos ad Christi fidem vi convocat."

[121] Canon 57.

[122] Cf. *supra* p. 91.

[123] Cf. *supra* p. 92. The statement that Sisebut's persecution was suggested by Emperor Heraclius is not confirmed by the sources; cf. Pérez Pujol, *Historia de las instituciones sociales de la España goda*, III, 410.

[124] Cf. Juster, *op. cit.*, p. 280, note 2; Görres, "Die Religions-politik

Toledo held early in the next reign (633) clearly imply that anti-Jewish legislation had not been enforced. An indication that the Jews used their wealth in escaping the rigor of the laws against them appears in the decree which forbade clerics or laymen under penalty of excommunication to take bribes in return for protection.[125] This canon laid down a detailed plan of dealing with the Jews. While condemning compulsory conversion, it decided that those previously converted might not return to their old faith or practices; if such converts had their sons or slaves circumcised the sons were to be separated from their parents, the slaves freed.[126] The baptized sons and daughters of Jews were to be taken from their parents and brought up under Catholic auspices.[127] The Christian children of baptized Jews who had again apostatized were to be the heirs of their parents.[128] Baptized Jews were not to associate with the unbaptized members of their race.[129] A Jew was forbidden to live with a Christian wife, unless he became a convert to her faith; children born of a union between a Christian and a Jew were to be reared in the Christian religion.[130] Baptized Jews who fell away from the Church might not testify in court.[131] Jews were not to discharge public offices or hold Christian slaves.[132] Although the council mitigated the procedure of Sisebut, it laid a rather heavy hand on the Jews in both civil and religious matters. The anti-Semitic program, now promulgated directly by the spiritual authorities, reflects the position of the Church

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des spanischen Westgotenkönigs Swinthila," *Zeitschrift für wissenschaftliche Theologie*, XLIX (1906), 255-270.

[125] Canon 58.

[126] Canon 59.

[127] Canon 60; Mansi's text does not limit this decree to baptized children. A number of MSS, however, contain the word *baptizatos* (cf. Hefele-Leclercq, *Histoire des conciles*, III, i, 274, note 1).

[128] Canon 61.

[129] Canon 62.

[130] Canon 63.

[131] Canon 64.

[132] Canons 65 and 66.

under the usurper Sisenand, who was quite willing to leave extensive powers with the bishops in return for the support they had given his throne.

In the next reign king and bishops together proceeded against the Jews. The Sixth Council (638) speaks with complacency of the fact that King Chintila (636-640) with the bishops had set out to eradicate the Jewish "*praevaricationes et superstitiones*" and to permit none but Catholics to remain in the kingdom. It decreed with the consent of the king and nobles that every future sovereign should take oath not to tolerate Jewish infidelity, and it confirmed the pertinent ordinances of the Fourth Council.[133] Under Chintila the baptized Jews were required to present a *placitum* in which after a long profession of faith and abjuration of Judaism they bound themselves to observe only Catholic rites and to accept responsibility for the religious conduct of all members of their families; they obliged themselves to stone to death apostates from Christianity over whom they had *potestas* and to denounce any others to the proper authorities under penalty of confiscation.[134] Chintila reigned only four years; his son Tulga was quickly removed by Chindaswinth (642-653), and apparently better days came for the Jews. The strong usurper has left no laws directed against them, though he did strike severely at Judaizing Christians, punishing them with death and confiscating their property.[135] The violent legislation of his successor seems to indicate that Chindaswinth had allowed the Jews to return from exile and to lapse from Christianity.

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[133] Toledo VI, canon 3.

[134] Isidore gives the meaning of *placitum* as it is used here: "*Alii dicunt pactum esse quod volens quisque facit; placitum vero etiam nolens compellitur. . . .*" (*Etimologiae*, IX, 24, 19). This was very emphatically an agreement which the Jews entered into against their will. A similar document presented by the Jews to King Receswinth and incorporated into the legal code (XII, 2, 17) makes references to the *placitum* of the reign of Chintila. The text of this earlier profession of faith was discovered only recently by P. Fidel Fita and published in *La ciudad de Dios*, IV (1870), 189-202. The text as reproduced by Ureña y Smenjaud, *La legislación gótico-hispana*, pp. 571-575, was used for purposes of this study. It can also be found in Dahn, *Die Könige der Germanen*, VI², 650 ff. Strangely enough Zeumer does not even refer to it in his edition of the *Leges Visigothorum*. Cf. Juster, *op. cit.*, pp. 281-282; Pérez Pujol, *op. cit.*, III, 414 ff.

Receswinth (649-672) in his *tomus* to the Eighth Council (653) spoke very bitterly against the Jews, announcing a policy of conversion or destruction, but the council very moderately decreed that nothing more rigorous should be introduced than the decrees of the Fourth Council.[136] Here again we find the bishops repudiating what they considered excessive zeal on the part of a ruler. Receswinth, however, would not be gainsaid; in 654 he took it upon himself to issue a series of laws which made the position of the Jews quite unbearable.[137] They were forbidden to follow the observances of their cult—circumcision, the Sabbath and Jewish festivals, their food laws. They were also restricted in their civil rights. In several instances his anti-Jewish laws carried the death penalty.[138] Like Chintila he compelled all Jews who had been baptized to sign a *placitum*, in which they promised to give up all Jewish practices and adhere to the Christian faith, and in which they agreed to put to death transgressors among them or to turn them over to the king; the sovereign was to have disposition of the property of the offenders.[139] In the reign of Receswinth the Ninth Council of Toledo (655) insisted that baptized Jews should frequent the divine services held by the bishop on feasts of both the Old and New Testaments.[140] The Tenth Council (656) shows the futility of even the milder legislation of the Church when it was constrained to pass a decree forbidding clerics to sell Christian slaves to Jews because of the danger of perversion.[141] King

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[135] XII, 2, 16.

[136] Toledo VIII, canon 12.

[137] These laws comprise most of *Leg. Vis.*, XII, 2.

[138] *Leg. Vis.*, XII, 2, 12; 16; 17.

[139] *Leg. Vis.*, XII, 2, 17.

[140] Canon 17.

[141] Canon 7.

Wamba (672-680) left no anti-Jewish legislation, but he probably was not kindly disposed to the Jews. When the rebellion of which Paulus was the leader broke out the Jews seem to have been clustered in Gallia Narbonensis, the seat of the insurrection, and Wamba after putting down the revolt drove them out.[142] The Eleventh Council, held in his reign (675), threatened anyone who should throw away the Sacred Host with very severe punishments. This may reveal the insincerity of some of the Jewish converts.[143]

King Erwig (680-687), perhaps to bid for further support of the Church by a display of religious zeal, promulgated a body of twenty-eight laws against the Jews, which he presented to the Twelfth Council (681) for ratification and which he incorporated into the legal code.[144] Though there is no adequate proof, responsibility for this legislation is quite commonly placed upon Julian, the metropolitan of Toledo.[145] For the most part the laws were similar in tone to previous enactments. The most drastic addition was the obligation placed upon the Jews to abjure their religion within a year under pain of exile and confiscation of their property.[146] There was no death penalty among his decrees as there had been under Receswinth.[147] In accepting a law of compulsory conversion together with other decrees of Erwig the Twelfth Council departed from the precedent set by the Eighth Council, which refused to endorse the radical ideas of Receswinth or to adopt any decrees stronger than those of the Fourth Council.[148] Erwig put the enforcement of his laws largely in the hands of the clergy, since the Jews could too easily bribe the nobles and lay judges.[149] He even deemed it necessary to add a law against possible avarice or lukewarmness of bishops in the pursuit of this matter.[150]

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[142] Juliani Toletani episcopi *historia Wambae Regis* (*Historia rebellionis Pauli adversus Wambam*), 5 and 28.

[143] Canon 11.

[144] *Leg. Vis.*, XII, 3, 1-28.

[145] Paul à Wengen in his monograph *Julianus Erzbischof von Toledo* attributes the framing of these laws to Bishop Julian. He admits that there is no direct proof, but he finds in Julian's works passages revealing a hatred for the Jews. Cf. *Historia Wambae Regis*, 5, and *De comprobatione aetatis sextae* (Migne, *P. L.*, XCVI, 537-586). He refers likewise to a work no longer extant but with a significant name: *Liber responsionum in defensionem canonum et legum, quibus prohibenda christiana mancipia dominis infidelibus deservire.* Wengen simply concludes that as chief prelate of the Spanish Church Julian must have dictated Erwig's policy against the Jews. Cf. his dissertation, pp. 31-39. What cruel irony if Julian was actually innocent of these various charges with which circumstances have connected him.

[146] *Leg. Vis.*, XII, 3, 3.

King Egica (687-702) adopted quite another plan. He did not directly force the Jews into baptism, but he struck at them economically. They were forbidden to engage in foreign commerce and to trade with Christians; they were obliged to sell to the *fiscus* at its own terms all slaves, buildings, lands, vineyards, olive groves, or other real property which they had at any time acquired from Christians. Baptized Jews, on the contrary, were freed of all these restrictions; besides, they were exempted from all the heavy taxation placed upon the Jews, while their unconverted brethren were made to bear an added share.[151] The law was approved by the Sixteenth Council (693).[152] This new policy was apparently the most effective yet conceived by the Gothic kings. Taking from them their means of gaining wealth it crushed the Jews with taxation at the same time; thus bribery which had served so well to neutralize other legislation became impossible. But Egica's plan miscarried. Jews, baptized and unbaptized alike, entered into conspiracy with their brethren in Africa against the Visigothic

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[147] Compare *Leg. Vis.*, XII, 2, 7; 12; 17, of Receswinth with XII, 3, 4, of Erwig.

[148] The Twelfth Council in approving this legislation of Erwig cited only the headings of the royal laws (canon 9).

[149] *Leg. Vis.*, III, 3, 23 and 25.

[150] *Leg. Vis.*, III, 3, 24.

[151] *Leg. Vis.*, XII, 2, 18.

[152] Cf. *tomus* and canon 1.

Kingdom. In swift retribution Egica summoned the Seventeenth Council (694), asking it to deal with the problem.[153] The Jews admitted their guilt, and the council considering it as proved and stressing especially the malice of apostasy from Christianity decreed terrible punishment. All the Jews were declared enslaved to Christian masters, who were to see to it that no Jewish rites were practiced. Their goods were confiscated to the *fiscus,* and their children after attaining the age of seven were to be taken from them and reared as Christians.[154] This was practically the Gothic penalty for treason enforced in a wholesale way. The Jews of Septimania at the request of Egica were exempted from this general doom. We do not know how the policy was worked out, nor have we any evidence of how Witiza treated the Jews. It is possible that he relaxed the laws, as he ruled more mildly than his father.

Then came the invasion and the worm may have turned when it had the opportunity. Perhaps the Jews threw in their cause with the Arabs, although there is no contemporary evidence that they did so. Arab chronicles of a somewhat later date tell us that the Jews helped to garrison the cities for the conquerors, while Latin writers are silent on the point until after the lapse of several centuries. Interesting and even plausible theories, besides many tales, have been invented concerning the part played by the Jews in the fall of Visigothic Spain, but they are not history.[155]

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[153] Cf. his *tomus.*

[154] Canon 8.

[155] Cf. Juster, *op. cit.*, pp. 297-298. Tailhan ("La ruine de de l'Espagne gothique," *Revue des questions historiques,* XXXI (1882), 384-386) maintains that the Jews were naturally too cautious to have espoused the Arab cause in the beginning of the invasion when the issue was uncertain. Remembrance of their punishment for treason under Egica would have prevented their risking further vengeance. If the Jews had aided the invaders Latin chroniclers would scarcely have failed to record the fact; the Arab chroniclers with their fondness for the legendary can scarcely be trusted in this matter.

Summary

It is safe to say that the maltreatment of the Jews in the Visigothic Kingdom was the unfortunate result of the union between Church and State. Catholic kings less dependent on the Church could scarcely have persecuted subjects so assiduously and cruelly for their religion; the Church less potently endowed with civil authority would have adhered to the purely spiritual side of the problem and to spiritual penalties. In passing it should be remarked that the Church in Spain did not combat Judaism for sake of a mere refinement of religious unity. It was felt that Christianity was actually threatened. Evidently the Jews were a powerful, aggressive body, propounding their doctrines, eager to proselytize. The renowned doctor of the Spanish Church, Isidore, deemed it necessary to write his two books of refutation, *Contra Judaeos,* which he dedicated to his sister, the nun Florentina.[156] As the kingdom drew to its end Bishop Julian at the request of King Erwig wrote an apology against the Jews: *De comprobatione aetatis sextae.*[157] Throughout the period, moreover, laws were enacted against attempting to draw Christians away to Judaism.

In the development of the anti-Jewish policy much more blame attaches to the kings than to the councils. The first violent legislation came from King Sisebut, who acted independently of the Church in the matter and whose extreme policy was repudiated by churchmen. The bishops at least to some extent championed freedom of conscience. Later, it is true, the Sixth Council agreed with King Chintila in an attempt at compulsory conversion. But soon thereafter the bishops refused to ratify a similar policy proposed by Receswinth, and the sovereign on his own initiative launched a program of persecution. King Erwig drafted his drastic policy and then secured conciliar recognition of his laws. The Seventeenth Council passed its harsh laws in obedience to Egica's request and because the cry of treason was raised against the Jews. The kings almost invariably took the lead in the matter and the councils followed, except on the occasions when they resisted the fanaticism of the rulers. There is no indication that the councils strove to stir up the zeal of the kings.

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[156] *De fide catholica ex veteri et novo testamento contra Judaeos* (Migne, *P. L.*, LXXXIII, 449-538).

[157] Migne, *P. L.*, XCVI, 537-586.

Why did the kings wax so fanatically zealous? Several times sovereigns averred that they aimed at an ideal of religious unity, the realization of which was being circumvented by the Jews of the kingdom, and the prosecution of this ideal regardless of all consequences led inevitably to tyranny. Notably in the case of Erwig the display of fanaticism may have been a bid to secure the further support of the bishops; perhaps he was urged on by Bishop Julian. It seems quite possible that a basic motive of the kings in their persecution of the Jews was avarice. Recared, it is true, refused to be bribed, but his successors up to the time of Sisebut, as we have seen, did not let zeal stand in the way of financial gain. If Sisebut disdained the idea of bribery he must have found in confiscation a ready means of filling his coffers. His two extant anti-Jewish laws attach the confiscation of property to the royal treasury as the penalty in several instances, and it seems highly probable that the *fiscus* was to profit in the same way by the property of those who went into exile for their religion. The same penalty entered into Chintila's policy to a considerable extent. Receswinth in several of his laws and in his *placitum* reserved the right of confiscation and, what must have been equally lucrative, that of granting mercy. Confiscations and fines in favor of the *fiscus* with provision for royal indult recur like a refrain in the laws of Erwig. The policy continued under Egica,[158] and after the conspiracy of the Jews the Seventeenth Council declared all their property confiscated to the *fiscus*.

Tragic as the whole policy was, it was ridiculously ineffective:

[158] Cf. *Leg. Vis.*, XII, 2, 18.

for one hundred years king after king made laws, always practically the same laws and always to little avail, since bribery of kings, nobles, and even churchmen nullified their force. Doubtless, this constant frustration accounts in part for the increasing rigor, almost equally futile, with which the successive laws were framed.

CONCLUSION

From the viewpoint of this monograph the conversion of the Goths to Catholicism divides their history into two parts. The period preceding this event is of less importance and has been sketched briefly. Early in the fifth century the Visigoths came into southwestern Europe as barbarians with a polity which was little more than tribal organization. They had, however, previously been in contact with Roman civilization and now proved readily responsive to its influence. As for religion they professed Arianism and looked upon it as a national attribute distinguishing them from the Catholic Romans. Settling at first in Gaul among a Roman provincial population as *foederati* of the Empire, they soon asserted their independence and created the Kingdom of Toulouse. Their kingdom rapidly burst the narrow confines of the territory first assigned to them and took on vast proportions in Gaul and Spain. Its very size became a weakness inasmuch as the Goths lacked adequate governmental machinery. The kingdom in Gaul fell before the rising power of the Franks, and the Goths withdrew into Narbonensis and Spain. There gradually the Kingdom of Toledo was built up. By the end of the Arian period nearly all Spain came to acknowledge Visigothic rule and was politically united under King Leovigild.

Since Gothic custom did not meet the exigencies of their new condition, the Gothic invaders took over many Roman institutions, including many points of law and the provincial governmental system. But at the same time they did not abandon their Teutonic inheritance and their polity was that of a Gothic kingdom.

The relation between the Gothic conquerors and their Roman subjects was rendered less cordial by the difference in religion. Quite naturally the Romans felt loath to submit to the Arian barbarians. Catholic bishops, on whom civic as well as spiritual leadership of their people had devolved, offered resistance to the spread of the Gothic Kingdom in Aquitaine. On their part the Goths at times persecuted the religion of their Roman subjects. Friction, however, did not always prevail. Catholics fought valiantly for their Arian sovereign against their co-religionists, the Franks. With the removal of the Goths to Spain the religious difference persisted and grew worse. It became acute under the powerful Leovigild. In connection with his plans for a united kingdom he strove to bring about religious unity on a basis of Arianism and to this end harassed the Catholics. The most formidable political uprising against him, that led by his son Hermenegild, a convert to Catholicism, had at least some connection with the religious struggle. It is important to note that officially the sympathy of the Catholic Church in Spain as reflected by several ecclesiastical writers of the time was against the rebellion of the Catholic prince. Leovigild failed to unite his people religiously, and thus a great chasm remained between the ruling and the subject people. Moreover, as an Arian he was unable to avail himself of the valuable help which the Church could offer him in the administration of his kingdom.

The conversion of the Goths under Recared gave a new direction to the current of their history. Simultaneously with it a close union between the State and the Catholic Church in Spain was formed. This union was accomplished to a large extent in and through the national synods of Toledo, which took on a civil as well as an ecclesiastical character. In the Third Council of Toledo (589) Recared, quite to the satisfaction of the Spanish prelates, assumed a protective attitude over the Church, and called upon the bishops to assist him in the administration of the kingdom. Thus the policy was begun. It was carried out in subsequent synods convoked by other sovereigns.

The kings arrogated to themselves powers over the Church that were nothing less than Erastian. Almost from the time of the conversion there is evidence to show that they appointed bishops; in the end a council explicitly recognized the royal right to appoint an incumbent to any vacant see in the kingdom. It is true, however, that the kings seem to have been conscientious and prudent in their choice of candidates for the episcopacy, especially as regards the metropolitan see of Toledo. The plenary councils of Spain were convoked by the sovereigns, and the bishops waited the royal summons. The kings addressed the councils in person or in writing, suggested matters for deliberation and legislation, and at times took part in the sessions. They also introduced members of the lay nobility into the conciliar gatherings. In no case did a council resist the reigning sovereign. The ascendancy of the king over the Church was a real danger to Catholicism in Spain. This Erastian policy combined with the comparative isolation of the Visigothic Church from the rest of the Christian world, the too great interest of churchmen in secular affairs, the exaggerated importance of the national councils, and the excessive powers of the see of Toledo, held great possibility of harm for the Spanish Church.

The participation of the bishops and councils in civil matters was brought about by the invitation of the kings, and the province of their secular powers was limited by royal will. Councils were convoked on at least two occasions to lend support to sovereigns whose crown was in jeopardy. They gave it most effectively. It became the policy of the councils to strive to stabilize the throne and curb the spirit of revolt prevalent among the Gothic nobles. Again and again they legislated against treason and sedition and hurled threats of ecclesiastical punishment against traitors. Because they had not sufficient power to enforce these salutary laws and because the noble factions were too strong to be held under effective yoke the success of the synods in checking sedition was only partial. Still their unceasing efforts for internal peace in the kingdom must have achieved untold good. Only two kings were murdered after the Goths became Catholics, whereas regicide was a frequent occurrence in the Arian period.

Though the councils endeavored to strengthen the position of the king, they did not unduly exalt his power. They recognized that his authority was from God, but they insisted that he was responsible to God for the proper use of it, and that he did not rule because of any personal excellence, but because he had been raised to the dignity of king by his equals and so enjoyed the powers that went with the throne. They cautioned him that he was not to oppress the people or look upon the office as an opportunity for personal gain, and that he was to keep the wealth of the crown quite separate from his private estate. When the later kings became too arbitrary the councils strove to restrain them and fought for the rights of the nobility.

Visigothic custom provided for an elective monarchy, and the bishops in full sympathy with this institution endeavored to preserve it. Since unwritten custom was vague and uncertain, they formulated it in conciliar decrees, laying down the method of election and the qualifications demanded in a candidate for the throne. Thus they created or fixed a considerable body of constitutional law regarding the kingship. The fact that the Goths were no longer a compact group made popular election quite impossible. The councils specified the bishops and prominent nobles as electors. Just what the proportion between the spiritual and temporal lords in the electing body was supposed to be we have no means of telling. The results of this system of election cannot be judged for the reason that it was almost never allowed to operate. In the case of Wamba, though conciliar prescriptions were apparently not exactly followed, election secured a very worthy sovereign. But ordinarily heredity decided the ruler, and in some instances revolution. Invariably a king established on the throne received conciliar support, even though he had risen by revolt. If this was not always the most noble policy and not always according to the principles which the councils put forth in regard to insurrection, surely it was best for the interests of the people.

The activity of the bishops in connection with political problems was not their only participation in civil matters. They also aided in the internal administration of the kingdom. This further secular responsibility was placed on them by the kings to combat the venality of civil officials and the tendency of the latter to oppress the people. King Recared and the Third Council of Toledo (589) imposed the guidance and supervision of these officials upon the bishops and provincial synods. The Fourth Council (633) under King Sisenand made the synods courts of appeal against civil officials. Chindaswinth and his successors gave the bishops civil jurisdiction empowering them to hear cases when litigants distrusted civil magistrates. The bishops brought with them into civil life their own integrity of character and much of the mildness of ecclesiastical law.

The codes of civil law afford the best index of the civilization of Gothic Spain and of the relation between Church and State. They were compilations intended for the use of judges. Distinct codes for the Romans and the Goths were employed until the middle of the seventh century, but even the earliest extant Gothic code shows profound Roman influence. This influence grew greater as the races drew nearer together. After the conversion of the ruling people to the religion of their Catholic subjects the kings began to make laws binding Romans and Goths alike. Conciliar legislation affected the people of both races, and some of it was of a secular nature. Finally King Receswinth in 654 promulgated his *Liber iudiciorum* as a single code for all his subjects. This code, which with comparatively minor changes remained in force to the end of the kingdom, was much more Roman than Teutonic, though it did not exclude all Germanic law. Its highly developed system of judicial procedure, taken over from Roman law, reflects much credit on the rulers who adopted it and their advisers. In the manner of administering justice Visigothic law immeasurably surpassed the crude methods followed in the other barbarian kingdoms.

Throughout the evolution of Visigothic law the influence of the Catholic clergy is evident. They were the *jurisprudentes* of the time. The *Liber iudiciorum,* as a result of the collaboration of ecclesiastics with its royal compilers, reveals to a very considerable degree the spirit of Christian culture. Clerical philosophers of the time injected into it the same fine political philosophy which characterized the national councils. It posited the welfare of the people as the ideal of the legislator; it made the ruler as well as the people subject to the laws of God and of the kingdom; it guaranteed justice to all men at the hands of the law and forbade magistrates to show partiality; it curbed the powerful and wealthy and protected the ordinary citizen. The mild spirit of Christianity softened a tendency to harshness in Gothic law as well as in the sovereigns themselves. Civil legislation on morality, marriage, and the position of women approached very close to the Christian standard. Some of it shows the direct influence of the Church councils. In some instances the civil code supported canon law in purely ecclesiastical matters, as for example in the legislation regarding clerical celibacy and religious vows. Very many of the civil laws contained religious motives and references. Sometimes there was merely an external touch of religion, little more than an indication of the religious faith of the lawgiver; but in many cases Christian truth and social principles elevated the law and operated for the good of the governed. The legal code is mute testimony to the fact that the chief concern of the Church was not the maintenance of ecclesiastical privilege; despite the position of influence which they enjoyed the bishops made no claim to unusual rights for the Church.

Slavery was one of the two great social problems of the kingdom. Neither the policy of Church or State in regard to it can be considered admirable. It was dictated rather by economic utilitarianism than by Christian idealism. However, the legislation of the later Catholic kings shows the unmistakable influence of Christianity tempering the law concerning slaves, so that toward the end of the kingdom the condition of the slaves was rather good. The worst blot on Visigothic civilization was the policy pursued by Church and State against the Jews. Kings led for the most part in the persecution and churchmen followed. The attitude of the latter deteriorated considerably in the course of time from the enlightened policy of Isidore of Seville early in the Catholic period. The prosecution of an ideal of religious unity regardless of the means employed began to seem a virtue to both Church and State. Doubtless the close union of the civil and the spiritual powers made the long continued and cruel persecution possible. But there were other elements that entered into it, notably the pertinacity of the Jews, the comparative futility of repeated legislation, and, presumably, the avarice of the kings.

It seems quite unjust to attribute the fall of Visigothic Spain to an enfeebling influence of the Church, which sapped the defensive powers of the kingdom. The scattering of the Goths prevented the easy assembling of the army; the refinements of civilization made them less fond of war. The spirit of revolution, which the Church did all in its power to restrain, broke the strength of the kingdom in the hour of the invasion and caused its downfall. It is true that the Church could have achieved much more for the civilization of Gothic Spain than it did, but it must be remembered that while the Church was attempting to raise the civilization of a barbarian nation to the Christian level it had constantly to fight the inroads of barbarism upon itself—upon its members and even its clergy. Visigothic law retained much that was not entirely according to the Christian ideal. This may be attributed to the fact that, though the clerics were consulted in regard to legislation, they were not left free to change the code as they may have desired; their good offices were limited by the will of the sovereign. Moreover, institutions change but slowly and relics of a dead past may have been allowed to remain in the code.

From the social point of view the value placed on the human soul, a value undreamed of in antiquity, with a recognition of the sacredness of personality and the rights of the individual, is the great contribution of Christianity to the world. We have seen that the Spanish Church appreciated the passion for independence innate to the Goths while striving to keep it within reasonable bounds. Together this spirit of Christianity and Teutonic love of liberty served as a restraint on the absolutism of Gothic monarch and State with the result that the individual was treated no longer as existing primarily for the State, as had been the theory in the ancient world. In the relation of man to man and the relative position of men before the law Gothic civilization had smoothed out the distinction between Goth and Roman, and it strove to protect the rights of the weaker man, even of the slave. Without doubt, for its time, the Visigothic Kingdom had attained to a remarkable level of culture. It far outstripped the other barbarian kingdoms. In all truth the union of Church and State worked great things for Visigothic Spain.

BIBLIOGRAPHY

I. SOURCES

Breviarium Alaricianum, ed. by Dr. Max Conrat. Leipzig, 1903.

Braulionis Caesaraugustani episcopi *epistolae*, Migne, *P. L.*, LXXX, 650-700. Paris, 1850.

Bulgarani comitis *epistolae tres*, Migne, *P. L.*, LXXX, 107-112, and in *Epistolae Wisigoticae, v. infra.*

Capitularia regum Francorum I, Monumenta Germaniae historica, *Legum* sectio II, ed. A. Boretius. Hanover, 1883.

Chronicarum quae dicuntur Fredegarii Scholastici libri IV, ed. by B. Krusch, MGH, *Scriptorum rerum Merovingicarum* tomus II. Hanover, 1888.

Concilia aevi Merovingici, ed. F. Maasen, MGH, *Legum* sectio II. Hanover, 1893.

Continuatio Isidoriana Hispana, ed. Th. Mommsen, MGH, *Auctorum antiquissimorum* tomus XI. Berlin, 1894.

Corpus iuris civilis:

Vol. I^{14}, *Institutiones*, ed. P. Krueger: *Digesta*, ed. Th. Mommsen-P. Krueger. Berlin, 1922.

Vol. II^{9}, *Codex Justinianus*, ed. P. Krueger. Berlin, 1915.

Vol. III^{5}, *Novellae*, ed. R. Schoell-Gulielmus Kroll. Berlin, 1928.

Dagoberti gesta, ed. Bruno Krusch, MGH, SS. rer. Merov. II. Hanover, 1888.

Decretales pseudo-Isidorianae, ed. Paulus Hinschius. Leipzig, 1863.

De vitis et miraculis patrum Emeritensium, Acta sanctorum Bollandiana, Novembris tomus I. Paris, 1887.

Epistolae Wisigoticae, ed. Wilhelmus Gundlach, MGH, *Epistolarum* tomus III (*Merovingici et Karolini aevi* t. I), pp. 658-690. Berlin, 1892.

Eugenii Toletani episcopi *carmina, epistulae, fragmenta*, ed. Fridericus Vollmer, MGH, *Auct. ant.* XIV, pp. 229-291. Berlin, 1905.

Eusebius, *Church History*, in Nicene and Post-Nicene Fathers. Second Series, vol. I. New York, 1904.

Felicis episcopi Toletani *vita S. Juliani*, Acta sanctorum Bollandiana, Martii tomus I, 784-785. Paris, 1867.

Ferotin, Dom Marius, *Le liber ordinum*, Monumenta Ecclesiae liturgica, vol. V. Paris, 1912.

Le liber mozarabicus sacramentorum et les manuscrits mozarabes, Mon. Ecclesiae liturgica, vol. VI. Paris, 1912.

Formulae Visigothicae, ed. by K. Zeumer, MGH, *Formulae Merovingici et Karolini aevi*, pp. 572-598. Hanover, 1886.

Fredegarii Scholastici *chronicae, v. Chronicarum quae dicuntur Fred. libri IV.*

Fructuosi Dumiensis episcopi *epistola ad Regem Recesvindum eiusque episcopos*, MGH, *Epistolae Wisigoticae*, pp. 688-689, *v. supra*.

Gai Institutiones or Institutes of Roman Law by Gaius[4], ed. E. Poste, M. A.; E. A. Whittuck, M. A., B. C. L.; A. H. J. Greenidge, D. Litt. Oxford, 1904.

Gregorii Magni Papae *dialogorum libri IV*, Migne, *P. L.*, LXXVII, 159-430. Paris, 1849.

Moralium libri sive expositio in librum B. Job., Migne, *P. L.*, LXXV, 509-1162. Paris, 1862.

Registrum epistolarum, ed. P. Ewald and L. Hartmann, MGH, *Epistolarum tomi* I, II, III. Berlin, 1887-1889.

Gregorii Turonensis *opera*, ed. W. Arndt et Br. Krusch, MGH, *SS. rer. Merov.* tomus I. Hanover, 1885.

Hydatii Lemici *continuatio chronicarum Hieronymianorum*, ed. Th. Mommsen, MGH, *Auct. ant.* tomus XI. Berlin, 1894.

Ildephonsi episcopi Toletani *de viris illustribus*, Migne, *P. L.*, XCVI, 195-206. Paris, 1856.

Isidori episcopi Hispalensis *de fide catholica ex veteri et novo testamento contra Judaeos*, Migne, *P. L.*, LXXXIII, 449-538. Paris, 1850.

De viris illustribus, Migne, *P. L.*, LXXXIII, 1082-1106.

Etimologiarum sive originum libri XX, ed. W. M. Lindsay, 2 vols. Oxford, 1911.

Historica Gothorum, Wandalorum, Sueborum, ed. Th. Mommsen, MGH, *Auct. ant.* tomus XI. Berlin, 1894.

Sententiarum libri tres, Migne, *P. L.*, LXXXIII. Paris, 1850.

Isidori Pacensis *chronicon*, Migne, *P. L.*, XCVI, 1253-1280; *v. Continuatio Isidoriana Hispana.*

Johannis abbatis monasterii Biclarensis *chronica*, ed. Th. Mommsen, MGH, *Auct. ant.* tomus XI. Berlin, 1894.

Jordanis *Romana et Getica*, ed. Th. Mommsen, MGH, *Auct. ant.* tomus V. Berlin, 1882.

Jordanes, *Origin and Deeds of the Goths*[2], tr. into English by Charles C. Mierow. Princeton, 1915.

Juliani *epitome Latina novellarum Justiniani*, ed. G. Haenel. Leipzig, 1873.

Juliani Toletani episcopi *de comprobatione aetatis sextae*, Migne, *P. L.*, XCVI, 537-586. Paris, 1856.

Historia Wambae Regis, ed. W. Levison, MGH. *SS. rer. Merov.* V, 486-535. Hanover and Leipzig, 1913. This work appears as: *Historia rebellionis Pauli adversus Wambam Gothorum Regem*, in Migne, *P. L.*, XCVI, 759-808. Paris 1856.

Leandri Sancti Hispalensis episcopi *regula sive liber de institutione virginum et contemptu mundi*, Migne, *P. L.*, LXXII, 871-804. Paris, 1849.

Leges Visigothorum, ed. K. Zeumer, MGH, *Legum* sect. I (*Legum nationum*

Germanicarum tomus I), Hanover and Leipzig, 1902. *V.* English translation *infra sub* Scott.

Leges Visigothorum antiquiores, ed. K. Zeumer, Fontes iuris Germanici antiqui. Hanover and Leipzig, 1894.

Lex Romana Visigothorum, ed. Gustavus Haenel. Leipzig, 1849.

Mansi, Johannes D., *Sacrorum conciliorum nova et amplissima collectio*, reprinted for H. Welter, 53 vols. Paris and Leipzig, 1901 ff.

Pauli Orosii *historiarum adversum paganos libri VII*, ed. Carolus Zangemeister, Corpus scriptorum ecclesiasticorum Latinorum, vol. V. Vienna, 1882.

Procopius, *History of the Wars*, with an English Translation by H. B. Dewing, 7 vols. The Loeb Classical Library, London and New York, 1914 ff.

Salviani *de gubernatione Dei libri VIII*, ed. Carolus Hahn, MGH, *Auct. ant.* tomus I. Berlin, 1877.

Scott, S. P., *The Visigothic Code* (*Forum Judicum*), tr. from the original Latin. Boston, 1910.

Sidonii Apollinaris (Gai Solii) *epistulae et carmina*, ed. Christianus Loetjohann, MGH, *Auct. ant.* tomus VIII. Berlin, 1887.

Sisebuti Gothorum Regis *epistolae*, Migne, *P. L.*, LXXX. Paris, 1850. *V. Epistolae Wisigoticae, supra.*

Vitae Desiderii episcopi Viennensis, ed. Bruno Krusch, MGH, *SS. rer. Merov.* tomus III, pp. 630-637. Hanover, 1896.

Taionis Caesaraugustani episcopi *sententiarum libri quinque*, Migne, *P. L.*, LXXX. Paris, 1850.

Theodosiani libri XVI cum constitutionibus Sirmondianis et leges novellae ad Theodosianum pertinentes, ed. P. Krueger, Th. Mommsen, P. Meyer, 3 vols. Berlin, 1905.

II. SECONDARY WORKS

Acton (Lord), John Emerich Edward Dalberg, *The History of Freedom and Other Essays.* London, 1909.

Allard, Paul, *Esclaves, serfs et mainmortables.* Paris, 1883.

Les origines du servage en France. Paris, 1913.

Les esclaves chrétiens. Paris, 1914.

Amador de los Rios, Don José, *Historia social, politica y religiosa de los Judios de España y Portugal.* 3 vols. Madrid, 1875-1876.

Barry, William, "The Liturgy of Toledo," *Dublin Review*, CXL (1907), 73-97.

Below, G. von, *Der deutsche Staat des Mittelalters.* Vol. I, 2 ed. Leipzig, 1925.

Boissier, Gaston, *La fin du paganism.* 5 ed. 2 vols. Paris, 1907.

Boyd, William K., *The Ecclesiastical Edicts of the Theodosian Code.* New York, 1905.

Brehaut, Ernest, *An Encyclopedist of the Dark Ages: Isidore of Seville* (Studies in History, Economics, and Public Law of Columbia University, vol. XLVIII, no. 1). New York, 1912.

Brunner, Heinrich, *Deutsche Rechtsgeschichte.* 2 ed. 2 vols. Vol. I^2, Leipzig, 1906; vol. II^2, revised by Claudius Freiherr von Schwerin, Leipzig, 1928.

Burgh, W. G. de, *The Legacy of the Ancient World.* London and New York, 1926.

Burke, Ulick Ralph, *A History of Spain from the Earliest Times to the Death of Ferdinand the Catholic.* 2 ed., by Martin A. S. Hume. London and New York, 1900.

Bury, J. B., *History of the Later Roman Empire from the Death of Theodosius I to the Death of Justinian.* 2 vols. London, 1923.

The Invasion of Europe by the Barbarians. London, 1928.

Cambridge Medieval History. 6 vols. New York, 1911 ff.

Carlyle, R. W. and A. J., *A History of Mediaeval Political Theory in the West.* 5 vols. Edinburgh and London, 1903-1929 (vol. I^2, 1927; vol. II^2, 1928).

Continental Legal History Series. Vol. I: *A General Survey of Events, Sources, Persons and Movements in Continental Legal History,* by various European authors. Ed. J. H. Wigmore et alii (Part VIII: "Spain," by Rafael Altamira, tr. by Francis S. Philbrick, pp. 579-702). Boston and London, 1912.

Crump, C. G. and Jacob, E. G., *The Legacy of the Middle Ages.* Oxford, 1926.

Dahn, Felix, *Die Könige der Germanen.* 12 vols. (vol. VI^2, Leipzig, 1885). Munich and Würzburg, 1861-1909 (*Gesammt-Register* zusammengestellt von Dr. Friedel Dahn. Leipzig, 1911).

Westgothische Studien: Entstehungsgeschichte, Privatrecht, Strafrecht, Civil- und Straf-process u. Gesammtkritik der Lex Visigothorum. Würzburg, 1870.

Dale, Alfred W. W., *The Synod of Elvira.* London, 1882.

Dalton, O. M., *The Letters of Sidonius, Translated with Introduction and Notes.* 2 vols. Oxford, 1915.

The History of the Franks by Gregory of Tours, Translated with Introduction and Notes. 2 vols. Oxford, 1927.

Debbing, G. B., *Les Juifs dans le moyen âge.* Paris, 1834.

Dictionnaire apologétique de la foi catholique. 4 ed. 4 vols. Paris, 1911-1929.

Dill, Samuel, *Roman Society in Gaul in the Merovingian Age.* London, 1926.

Duchesne, Louis, *Christian Worship: Its Origin and Evolution,* translated into English from the third French edition by M. L. McClure. London, 1903.

Early History of the Christian Church, translated into English by Claude Jenkins. 3 vols. New York, 1909-1924.

L'Église au VIme siècle. Paris, 1925.

Dunning, William A., Ph. D., *A History of Political Theories*. 3 vols. New York and London, 1902-1926.

"España," *Enciclopedia universal ilustrada europeo-americana*, vol. XXI. Barcelona, 1923.

Ficker, Julius, *Ueber die nähere Verwandschaft zwischen gothisch-spanischem und norwegisch-islandischem Recht* (Mittheilungen des Instituts für österreichische Geschichtsforschung, II Ergänzungsband, pp. 455-542). Innsbruck, 1888.

Francisci, Pietro de, *Per la storia dell' episcopalis audientia fino alla nov. XXXV (XXXIV) di Valentino*. Rome, 1915 (reprinted from *Annali della facoltá di giurisprudenza della Universitá di Perugia*, vol. XXX, 1915).

Gams, Pius B., *Die Kirchengeschichte von Spanien*. 2 vols., in 5. Regensburg, 1862.

Geffcken, Heinrich, *Church and State*, translated by Edward F. Taylor. 2 vols. London, 1887.

Gibbon, Edward, *The History of the Decline and Fall of the Roman Empire*, ed. by J. B. Bury. 7 vols. London, 1909-1912.

Görres, Franz, "Ueber die Anfänge des Königs der Westgothen Leovigild," *Forschungen zur deutschen Geschichte*, XII (1872), 591-618. Göttingen.

"Zur Geschichte des Königs Leovigild," *ibid.*, XIII (1873), 634-645.

"Zwei Beiträge zur spanischen Kirchengeschichte des 6. Jahrhunderts," *Zeitschrift für wissenschaftliche Theologie*, XXVIII (1885), 319-332. Leipzig.

"König Rekared und das Judentum," *ibid.*, XL (1897), 284-286.

"Religionspolitik Witterichs," *ibid.*, XLI (1898), 102-105.

"Der Primas Julian von Toledo (680-690)," *ibid.*, XLVI (1902-1903), 524-553.

"Charakter und Religionspolitik des vorletzten spanischen Westgothenkönigs Witiza," *ibid.*, *XLVIII* (1904-1905), 96-111.

"Das Judentum im westgothischen Spanien von König Sisebut bis Roderich (612-711)," *ibid.*, XLVIII, 353-361.

"Die Religionspolitik des spanischen Westgothenkönigs Swinthila," *ibid.*, XLIX (1906), 255-270.

"Kirche und Staat im Westgotenreich von Eurich bis auf Leovigild. (466-567/69)," *Theologische Studien und Kritiken*, LXVI (1893), 708-734. Gotha.

Graetz, Heinrich, *History of the Jews*, translated from the German. 5 vols., and index vol. Philadelphia, 1902.

Guizot, François P. W., *Histoire générale de la civilisation en Europe*. Brussels, 1840 (Lectures originally delivered in 1828).

Histoire de la civilisation en France in *Cours d'histoire moderne.* 4 vols. Brussels, 1835 (Lectures originally delivered in 1830).

The History of Civilization from the Fall of the Roman Empire to the French Revolution, translated by William Hazlitt. 4 vols. (vol. I: *General History of Civilization in Modern Europe;* vols. II-IV: *History of Civilization in France*). New York (Appleton), 1885.

Halban, Alfred von, *Das römische Recht in den germanischen Volksstaaten* (Untersuchungen zur deutschen Staats-und Rechtsgeschichte herausgegeben von Dr. Otto Gierke, Heft LVI (1899), LXIV (1901), LXXXIX (1907). Breslau.

Hayes, Carlton H., *An Introduction to the Sources Relating to the Germanic Invasions.* New York, 1909.

Hefele, J., *Histoire des conciles,* tr. by H. Leclercq. 8 vols. in 16. Paris, 1907-1921.

Heiss, Aloïss, *Description générale des monnaies des rois wisigoths d'Espagne.* Paris, 1872.

Hergenröther, Joseph, *Catholic Church and Christian State: A Series of Essays on the Relation of the Church to the Civil Power,* translated from the German. London, 1876.

Hinojosa, Eduardo de, "Das germanische Element im spanischen Rechte" (tr. by Rudolf Köstler from the French), *Zeitschrift der Savigny Stiftung für Rechtsgeschichte,* Band XXXI (1911), germanistische Abteilung, pp. 282-359. Weimar.

Hodgkin, Thomas, *Italy and Her Invaders.* 8 vols. Oxford, 1880-1889 (2 ed., I-IV in 5, 1892-1896).

"Visigothic Spain," *The English Historical Review,* II (1887), 209-234. London.

Jenks, Edward, *Law and Politics in the Middle Ages.* 2 ed. London, 1913 (reprinted 1919).

Juster, Jean, "La condition légale des Juifs sous les rois visigoths," *Études d'histoire juridiques offertes à Paul Frédéric Girard,* vol. II, pp. 275-335. Paris, 1913.

Labriolle, Pierre de, *History and Literature of Christianity from Tertullian to Boethius,* translated from the French by Herbert Wilson. New York, 1925.

Lear, Floyd Seyward, "Crimen Laesae Maiestatis in the Lex Romana Visigothorum," *Speculum,* IV (1929), 73-87. Cambridge, Mass.

Leclercq, Dom H., *L'Espagne chrétienne.* 2 ed. Paris, 1906.

"Adultere," *Dictionnaire d'archéologie chrétienne et de liturgie.* I, i, 546-550. Paris, 1907.

"Divorce," *ibid.,* IV, i, 1220-1221. Paris, 1920.

"Espagne," *ibid.,* V, i, 407-523. Paris, 1922.

"Goths," *ibid.,* VI, ii, 1430-1448. Paris, 1925.

"Judaisme," *ibid.,* VIII, i, 1-254. Paris, 1928.

"Jurisdiction," *ibid.,* VIII, i, 438-503. Paris, 1928.

Lee, Guy Carleton, *Historical Jurisprudence.* New York, 1900.

Lindo, E. H., *The History of the Jews of Spain and Portugal.* London, 1848.

Magnin, Etienne, *L'Église wisigothique au VIIe siècle.* Vol. I, Paris, 1912; vol. II has not yet been published.

Manitius, Max, *Geschichte der lateinischen Literatur des Mittelalters.* 2 vols., (Müller Handbuch, IX Band, II Abteilung), Munich, vol. I, 1911; vol. II, 1923.

Montesquieu, Baron de, *The Spirit of Laws,* translated from the French by Thomas Nugent. 2 vols. Cincinnati, 1873.

Morey, Wm. C., *Outlines of Roman Law.* New York and London, 1891.

Pérez Pujol, Eduardo, *Historia de las instituciones sociales de la España goda.* 4 vols. Valencia, 1896.

Pijper F., "Christian Church and Slavery in the Middle Ages," *American Historical Review,* XIV (1909), 675-695. New York.

Rostovtzeff, M., *The Social and Economic History of the Roman Empire.* Oxford, 1926.

Savigny, Friedrich Carl von, *Geschichte des römischen Rechts im Mittelalter.* 2 ed. 7 vols. Heidelberg, 1834 (vols. I, II, III) and 1850 (vols. IV, V, VI, VII).

Schaub, Friederich, "Studien zur Geschichte der Sklaverei im Frühmittelalter" (Abhandlungen zur mittleren u. neuen Geschichte, Heft, XLIV). Berlin and Leipzig, 1913.

Schmidt, Ludwig, *Geschichte der deutschen Stämme bis zum Ausgang der Völkerwanderung.* Band I. Munich, 1904-1910.

Schilling, Otto, *Naturrecht und Staat nach der Lehre der alten Kirche.* Paderborn, 1914.

Schönfeld, M., "Goti," Pauly-Wissowa, *Real-Encyclopädie der classischen Altertumswissenschaft.* Supplementband III, 797-845. Stuttgart, 1918.

Schröder, Richard and Künssberg, Eberhard Frh. von, *Lehrbuch der deutschen Rechtsgeschichte.* 6 ed. Berlin and Leipzig, 1922.

Schubert, Hans von, *Staat und Kirche in den arianischen Königreichen und im Reiche Chlodwigs.* Munich and Berlin, 1912.

Schulten, A., "Hispania," Pauly-Wissowa, *Real-Encyclopädie der klassischen Altertumswissenschaft,* VIII, 1965-2046. Stuttgart, 1912.

Schwerin, Claudio Baron de, "Notas sobre la historia del derecho español mas antiguo" (tr. by R. Carande), *Anuario de historia del derecho español,* I (1924), 27-54. Madrid.

Schwerin, *v.* Brunner, *supra.*

Schwind, E. von, "Kritische Studien zur Lex Baiuvariorum I," *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde,* XXXI (1905), 401-453. Hanover and Leipzig.

Séjourné, Paul, *Saint Isidore de Séville: son rôle dans l'histoire du droit canonique.* Paris, 1929.

Shaw, R. Dykes, "The Fall of the Visigothic Power in Spain," *The English Historical Review*, XXI (1906), 209-228. London.

Smith, William and Wace, Henry, *A Dictionary of Christian Biography*. 4 vols. London, 1880.

Stutz, U., *Geschichte des kirchlichen Benefizialwesens von seinen Anfängen bis auf die Zeit Alexanders III.* Berlin, 1895.

Tailhan, S. J., Jules, "Les Espagnols et les Wisigoths avant l'invasion arabe," *Revue des questions historiques*, XXX (1881), 5-46. Paris.

"La ruine de l'Espagne gothique," *ibid.*, XXXI (1882), 341-408. Paris.

Taylor, Henry O., *The Mediaeval Mind*. 2 vols. London, 1911.

Torres, Manuel, "El estado visigótico: algunos datos sobre su formación y principios fundamentales de su organización politica," *Anuario de historia del derecho español*, III (1926), 307-475. Madrid.

Troplong, Raymond T., *De l'influence du Christianisme sur le droit civil des Romains*, ed. by Abbé Bayle. Tours, 1902.

Ureña y Smenjaud, Rafael de, *La legislación gótico-hispana*. Madrid, 1905.

Historia de la literatura juridica español. 2 vols. Madrid, 1906 (vol. II, iii, 2 ed. of *La legislación gótico-hispana, v. supra*).

Vasiliev, A. A., *History of the Byzantine Empire* (University of Wisconsin Studies in the Social Sciences and History, no. 13) translated from the Russian by Mrs. S. Ragozin. Vol. I, Madison, 1928.

Villada, Zacarias Garcia, *Historia eclesiástica de España.* Vol. I in 2 (*El cristianismo durante la dominación romana*). Madrid, 1929.

Vinogradoff, Paul G., *Roman Law in Medieval Europe.* New York, 1909.

Watkins, Oscar D., *A History of Penance.* 2 vols. London, 1920.

Wattenbach, W., *Deutschlands Geschichtsquellen.* 6 ed. 2 vols. Berlin, 1893-1894. Vol. I, 2 ed. by Ernest Dümmler. Stuttgart and Berlin, 1904.

Wengen, Paul à, *Julianus Erzbischof von Toledo: Sein Leben und seine Wirksamkeit unter den Königen Erwig und Egica.* St. Gallen, 1891.

Wietersheim, Edward K. von, *Geschichte der Völkerwanderung*, 2 ed., by F. Dahn. 2 vols. Leipzig, 1880-1881.

Wilamowitz Moellendorf, U. von—Kronmeyer, H. J.,—Heisenberg, A., *Staat und Gesellschaft der Griechen und Römer bis zum Ausgang des Mittelalters* (Die Kultur der Gegenwart, Teil II, Abt. iv, 1), 2 ed. Leipzig, 1923.

Willoughby, Westel W., *The Political Theories of the Ancient World.* New York, London, Bombay, 1903.

Wretschko, Alfredus de, "De usu Breviarii Alariciani forensi et scholastico per Hispaniam, Galliam, Italiam regionesque vicinas," *Theodosiani libri* XVI, I, ii, pp. cccvii-ccclxxvii (Mommsen). Berlin, 1905.

Zeumer, Karl, "Geschichte der westgothischen Gesetzgebung," *Neues Archiv* *der Gesellschaft für ältere deutsche Geschichtskunde,* XXIII, ii (1898), 419-516; XXIV, i (1899), 39-122; XXIV, ii (1899), 571-630; XXVI, i (1901), 91-149. Hanover and Leipzig.

"Ueber zwei neuentdecke westgothische Gesetze," *Neues Archiv,* XXIII, i (1897), 77-112.

"Zum westgothischen Urkundenwesen," *Neues Archiv,* XXIV, i (1899), 15-38.

"Die Chronologie der Westgothenkönige des Reiches von Toledo," *Neues Archiv,* XXVII, ii (1902), 409-444.

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